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In the Supreme Court of the United States

OCTOBER TERM, 1962

No. 519

MOORE-McCORMACK LINES, INC., *Petitioner*

vs.

UNITED STATES OF AMERICA, *Respondent*

Petition for Writ of Certiorari to the United States Court of Claims

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In the Supreme Court of the United States

OCTOBER TERM, 1962

MOORE-MCCORMACK LINES, INC., *Petitioner*

vs.

UNITED STATES OF AMERICA, *Respondent*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

Petitioner Moore-McCormack Lines, Inc. prays that a writ of certiorari issue to review the judgment of the United States Court of Claims, entered in the above entitled case on April 4, 1962, with motion for a new trial overruled on July 18, 1962.

CITATION TO OPINION BELOW

The opinion of the United States Court of Claims delivered by Whitaker, Judge, was filed on April 4, 1962, and has not yet been reported but is set forth in the Transcript of the Record and as Appendix A.

JURISDICTION

The judgment of the United States Court of Claims sought to be reviewed was entered April 4, 1962. A motion for a new trial was overruled on July 18, 1962. The jurisdiction of this Court is invoked under 28 U.S.C. 1255.

QUESTIONS PRESENTED

1. Can the United States assert the laws of Argentina, Uruguay, and Brazil in the United States Court of Claims against plaintiff, a U. S. citizen, to avoid payment due under United States law when

(a) the foreign laws impose burdensome free mail carriage upon plaintiff's United States flag vessels in return for worthless and unused harbor privileges, and,

(b) the foreign laws have been outlawed and nullified by Universal Postal Union Conventions which permitted the United States to collect for the services of plaintiff, and,

(c) the United States by the Convention of the Postal Union of the Americas and Spain voluntarily relinquished its right to collect for plaintiff's services by obligating itself to convey by the ships of its flag without any charge all the mails of the other contracting countries, and,

(d) the foreign nations did not apply the local laws in question to plaintiff but expressly tendered their mails to plaintiff as Convention mails, and,

(e) "Most favored nations" treatment resulting from "free and gratuitous transit" performed under the Convention was the basis on which privileges, if any, were extended to the ships of member countries, including those of plaintiff, and,

(f) the result is that plaintiff was required to perform services of great value with payment from no one?

2. Can the United States escape paying the plaintiff by relying upon interpretations made by its Post Office Department that local laws of Argentina, Uruguay, and Brazil required the plaintiff to carry their mails free, when the official interpretations of the governments of Argentina, Uruguay, and Brazil were to the contrary stating that these were Convention mails which the plaintiff carried free as a result of the obligation of the United States under the Conventions of the Postal Union of the Americas and Spain?

3. May laws of foreign countries be received in evidence on behalf of the United States to establish defenses or exceptions to laws of the United States requiring payment to the plaintiff when these laws provide for no such defenses or exceptions?

4. May the Court of Claims shift to the plaintiff the burden of disproving an affirmative defense of "other payment"?

5. If the United States can avail itself of the fact that plaintiff's vessels were eligible to receive privileges under foreign law because of their carriage of Convention mails, is it not a denial of just compensation to allow the privileges as an offset of more of the debt owed by the United States to the plaintiff than the *pro tanto* or true value of the privileges?

6. When all the evidence shows that the decree of Brazil being asserted against the plaintiff is confiscatory in that it provides no *quid pro quo* for plaintiff's services, should the Court of Claims as a matter of *stare decisis* hold to its improper construction that an earlier similar law provided a *quid pro quo*, when its previous construction resulted from a mistake of fact?

7. Can the plaintiff maintain a cause of action against the United States for the recovery of money when the Post Office

Department arbitrarily and without notice diverted from plaintiff's vessels to plaintiff's financial loss mails which they were entitled to receive under a preference established by the Department pursuant to the requirements of Section 405 (a) of the Merchant Marine Act of 1936?

CONSTITUTIONAL PROVISIONS, STATUTES, INTERNATIONAL POSTAL CONVENTIONS, ORDERS OF THE POSTMASTER GENERAL, AND THE CONSTITUTIONAL PROVISIONS, DECREES AND EXECUTIVE INTERPRETATIONS OF ARGENTINA, URUGUAY, AND BRAZIL INVOLVED

1. Constitution of the United States

Amendment 5

"— — — nor shall private property be taken for public use, without just compensation."

2. Statutes of the United States

Merchant Marine Act of 1936, Sec. 405 (a) (49 Stat. 1995) (46 U.S.C.A. 1145):

> (a) All mails of the United States carried on vessels between ports between which it is lawful under the navigation laws for a vessel not documented under the laws of the United States to carry merchandise shall, insofar as practicable, be carried on vessels of United States registry.

3. Conventions of the Postal Union of the Americas and Spain:

Article 3 of the Convention of the Postal Union of the Americas and Spain, signed at Madrid on November 10, 1931, and approved by the President on February 9, 1932 (47 Stat. 1925), provided in part as follows:

ARTICLE 3

Free and gratuitous transit

1. The gratuity of territorial, fluvial and maritime transit is absolute in the territory of the Postal Union of the Americas and Spain; consequently, the countries which form it obligate themselves to transport across their territories and to convey by the ships of their registry or flag which they utilize for the transportation of their own correspondence, without any charge whatsoever to the contracting countries, all that which the latter may send to any destination.

* * * * *

FINAL PROTOCOL OF THE CONVENTION
(47 Stat. 1940)

IV

2. Each of the contracting countries obligates itself to maintain the privileges which the ships of the other countries of the Postal Union of the Americas and Spain transporting correspondence gratuitously are at present enjoying, as well as to concede to them in the future all the privileges which they extend to ships of any other country that perform said service.

The same language appears as Article III of the Final Protocol of the Convention of Panama, 1936 (50 Stat. 1651); as Article II of the Votos del Congreso or Resolutions of the Congress of Rio de Janeiro of 1946; and as Article I of the Votos del Congreso or Resolutions of the Congress of Madrid of 1950. (The Votos del Congreso or Resolutions of the Congress of Rio de Janeiro, 1946, and Madrid, 1950, appear as a part of the Documents of the Fifth and Sixth American-Spanish Postal Congress.)

REGULATIONS OF EXECUTION OF THE CONVENTION OF THE POSTAL UNION OF THE AMERICAS AND SPAIN (47 Stat. 1942)

ARTICLE 14

Application of the Universal Postal Convention and domestic legislation

1. All matters in connection with the exchange of correspondence among the contracting countries which are not provided for in these Regulations will be subject to the stipulations of the Regulations of the Convention of the Universal Postal Union in force.

2. Likewise, the domestic legislation of the same countries will be applicable in everything that has not been determined by either set of Regulations.

Article 3 of the Convention of the Postal Union of the Americas and Spain, signed at Madrid on November 9, 1950, ratified by the President on June 22, 1951 (T. I. A. S. 2286), provided in part as follows:

ARTICLE 3

Free and gratuitous transit

1. The gratuity of territorial, fluvial and maritime transit is absolute in the territory of the Postal Union of the Americas and Spain; consequently, the countries which form it obligate themselves to transport across their territories and to convey by ships of their registry or flag, without any charge to the contracting countries, all the correspondence which the latter may send to any destination whatsoever. However, this gratuity of transit will not be applied to the subsequent maritime transmissions of correspondence destined for a third country which is not a member of the Postal Union of the Americas and Spain in cases where a reshipment or transfer may be necessary, or justified expenses of handling may arise.

* * * * * *

4. Conventions of the Universal Postal Union

Convention of Madrid, 1920 (42 Stat. 1971) provides:

ARTICLE 3

3. "The high contracting parties undertake not to impose on postal grounds special obligations on packets employed in regular mail services and maintained by a country of the Union in exchange for advantages and privileges which may exist or be established in favor of any class of Merchant Ships, especially as regards the formalities and arrangements on entering or leaving port."

Convention of Stockholm, 1924 (44 Stat. 2221), provides:

ARTICLE 70

Transit Charges

1. Correspondence exchanged in closing mails between two Administrations of the Union, by means of the services of one or several other Administrations (third services), is subject to the payment to each of the countries traversed or whose services participate in the conveyance, of the transit charges indicated in the following table: (table omitted.)

4. Barring contrary agreement, maritime conveyances effected directly between two countries, by means of ships belonging to one of them, as well as conveyances effected between two offices of the same country through the intermediary of services belonging to another country, are considered as third services.

The same provisions were continued in succeeding conventions to date.

Convention of London, 1929, 46 Stat. 2523
Convention of Cairo, 1934, 49 Stat. 2741
Convention of Buenos Aires, 1939, 54 Stat. 2049

Convention of Paris, 1947, 62 Stat. 3157
Convention of Brussels, 1952, TIAS 2800

Les Actes de L'Union Postale Universelle, revisés á Ottawa 1957 et annotés par les soins du Bureau International, i.e., The Acts of the Universal Postal Union, revised at Ottawa in 1957 and annotated through the efforts of the International Bureau. The annotations on transit charges, Article 67, Paris, Article 78, Brussels, and Article 79, Ottawa, all read the same. The pertinent annotation reads:

> "If the services of steamships connecting two countries by means of ships of one of them are considered as 'third services', they nevertheless do not have the quality of an intermediary third Administration. They are not authorized to agree upon transit rates, reductions, or dispensations, with the debtor country, except to collect the fees. This right is reserved to the country to which these ships belong, namely the one which grants them privileges in accordance with its legislation or subsidizes them either by subsidies property so-called, or in the form of premiums (contractual services). It necessarily follows that the debtor country on its part is not authorized to impose on those foreign ships the free transportation of mails, not even in connection with the facilities provided for the loading and unloading of the ship in its ports and availing itself of certain regulations established in its domestic service."

5. Orders of the Postmaster General

These Orders appear in Appendix A, pages 16-21, as the Court's Finding of Fact 12.

6. Constitutional Provisions, Decrees, and Executive Interpretations of Argentina, Uruguay and Brazil

These provisions appear in the Appendix as follows:

Argentina

Decree, Article 421 as it appears in Digesto Maritimo y Fluvial appears in Appendix A, page 27, as the Court's Finding of Fact 27.

Certificate, Ministry of Communications, February 21, 1957, appears in Appendix A, pages 27-28, as the Court's Finding of Fact 29.

Uruguay

Decree No. 20730, January 3, 1952, appears in Appendix B, pages 27-35, as the Commissioner's Finding of Fact 35.

Certificate, Ministry of Industry and Labor, December 14, 1958, appears in Appendix A, pages 30-31, as the Court's Finding of Fact 33.

Brazil

Constitution, Article 141, Paragraph 16 appears in Appendix A, page 31, as the Court's Finding of Fact 35.

Decree No. 10,524, October 1913, Article 159, appears in Appendix B, pages 37-38, as the Commissioner's Finding of Fact 42.

Decree law No. 3,326, June 3, 1941, appears in Appendix A, page 33, as the Court's Finding of Fact 37.

Executive Decree of January 17, 1951, issued in June 15 contains essentially a rewrite of the 1941 decree law. Appendix A, page 34, Court's Finding of Fact 39.

Decree law No. 5406, April 14, 1943, appears in Appendix A, pages 33-34, as the Court's Finding of Fact 38.

Letters, Ministry of Public Works (plaintiff's exhibit 9), are as follows:

MINISTRY OF PUBLIC WORKS — Nov. 1, 1948.
1st DC

Carriage of Post Office Mails — October 1948.
2 encl.

SIRS: In accordance with request of the Moore-McCormack (Navegacao) S.A., of this city, we hereby confirm the terms of communications issued by this Department, nos. 937 and 2088 of January 10th, 1939, and February 12th, 1940, respectively, by means of which I advised you, that in accordance with Brazilian Laws, Steamship Companies are not compelled to carry, free of charge, mails forwarded by the Brazilian Post Office, and that the advantages granted to these Companies do not make such transportation compulsory.

2. The Administration of the Brazilian Post Office Department, takes advantage of free carriage for its mails on vessels sailing under the flags of the countries participating of the U. P. A. E. (Postal Union of the Americas and Spain) having in mind, solely, the disposition contained in paragraph 1 of article 3 of the Postal Convention of Panama in 1936, reinforced by the same article and paragraph of the Postal Convention held in Rio de Janeiro in 1946.

3. For the sake of a better understanding of this subject we are attaching hereto copies of the above mentioned communications.

I take this opportunity to present our very best regards,

Postmaster General (Acting),
MANOEL DA SILVA GASPAR.

To the POSTMASTER GENERAL,
Washington, (D. C. Etate Unie d'amerique)
Free Translation.
(Enclosures.)

COMMUNICATION 937
OFFICE OF THE POSTMASTER GENERAL,

RIO DE JANEIRO, *January 10th, 1939.*

To the POSTMASTER GENERAL,
Washington, U. S. A. — No. 937.

DEAR SIR: I would refer to your letter of the 5th of December ult., regarding the transportation of mails, in view of the Postal Convention of the Americas and Spain. 2. In this connection this Department received from Moore-McCormack (navegacao) S. A., agents of the American Republics Line a request for the Brazilian Postal Department to communicate with your Department in order to commence the reception by this line, of the mails at ports on their schedule. 3. We are also advised that the above line received from your Department a declaration that your Department was awaiting requisition for the free transportation of mails in accordance with the Convention. 4. This Department did not open a brief in the form of a requisition for free transportation, in view of the dispositions contained in nos. 1 and 2, art. 3 of Chapter "Free and Gratuitous Transportation" of the acts signed at the 4th Congress of the Postal Union of the Americas and Spain in 1936. 5. However, in view of your Department's expectation in this regard to the acquiescence by the Brazilian Postal Dept., to use the American Republics Line, we are pleased to advise you that, within the dispositions contained in the Acts to which our countries were contracting parties, the Brazilian Postal Department can commence the expedition and reforwarding of mail, since the steamers in question are matriculated and travel under your country's flag. Cordially yours,

(Signed) Capt. MARIO JOSE FARIA LEMOS.

COMMUNICATION 2088

FEBRUARY 12, 1940.

SIR: In reply to your communication n. 3112 (c) of

May 26 ult., I have the pleasure to inform you that, according to the Brazilian Law, Steamship Companies are not compelled, at present, to transport free of charge, mails issued by our Postal Department. 2. Furthermore, the advantages and favours granted to these companies do not make it compulsory to transport mails gratuitously. 3. However, we wish to inform you that the American Republics Line operates at Brazilian ports under the same conditions and manner as her predecessor, the "Manson Steamship Line." Please accept our best regards, Technical Director of the Postal Department: (Signed) Algredo Avelino Guimaraes – Post Office Department – Second Assistant Postmaster General, Washington D. C. – 34.888/37 – O. L. – M. R.

STATEMENT OF THE CASE

The basic issues presented by this case are novel and unprecedented issues of law – not issues of fact. The report of the Trial Commissioner in all pertinent respects finds the facts to be substantially as alleged by the plaintiff. The Court adopted most of the Commissioner's findings as written. It eliminated some and altered others without explanation. The Commissioner's report affords a comprehensive account of the situations found in the case.

The case has two separate and distinct factual and legal situations:

Count I

The northbound (and interport) transportation of the mails by vessels of Plaintiff from South American countries to the United States under the "free and gratuitous transit" provisions of Conventions of the Postal Union of the Americas and Spain referred to herein as Convention mails.

In this situation, the Plaintiff has been required by the concurrent action of the United States, Argentina, Uruguay,

and Brazil to perform approximately $800,000 of mail transportation since World War II without any payment. This resulted from Argentina, Uruguay, and Brazil on the one hand saying to the Plaintiff, in effect, "you must carry our mails free because we are entitled to this service from United States flag vessels by agreement of the United States under an international convention." On the other hand the United States said "notwithstanding the Convention and Postmaster General Orders providing payment to you for these services we will not pay because local decrees of the countries tendering the mails required you to carry them free in return for packet privileges."

As far back as the nineteenth century foreign passenger packet vessels had been carrying the small volume of mail of a few South American countries without charge as a courtesy. The undelayed movement of such vessels was of importance to these countries. As a consequence preferential anchorage and berthing was extended to these vessels in return for free carriage of the mails. The concept of preferential berthing in exchange for free mail transportation was formalized by local decrees of these countries. It exists nowhere else in the world.

As mail volume increased this free carriage became so onerous to shipping lines and their parent nations that the Universal Postal Union outlawed these local decrees by adopting the following provision:

> "The high contracting parties undertake not to impose on postal grounds special obligations on packets employed in regular mail services and maintained by a country of the Union in exchange for advantages and privileges which may exist or be established in favor of any class of Merchant Ships, especially as regards the formalities and arrangements on entering or leaving port." (Convention of Madrid, 1920, Art. 3, Sec. 3.)

Thereafter under the Conventions of the Universal Postal Union the United States could have billed the Postal Administrations of Argentina, Uruguay and Brazil for the services of the Plaintiff involved in this case notwithstanding any local law.

The right to bill and collect for the services of the Plaintiff was voluntarily relinquished by the United States by agreeing to the Conventions of the Pan-American Postal Union and of the Postal Union of the Americas and Spain.

The Universal Postal Union had authorized regional postal unions. The Pan-American Postal Union formed in 1921 (now the Postal Union of the Americas and Spain) embraced the Postal Administrations of the New World. The fundamental concept of this regional postal union was "free and gratuitous transit" of the mails. Under the principle of "free and gratuitous transit" each country obligated itself to transport across its territory and to convey by ships of its flag which it utilized for transportation of its own mails, all mails of the other members of the Union, this without any charge whatsoever to the other members. Each country was to pay its own vessels and transportation facilities for the services rendered to all.

As an incident to providing "free and gratuitous transit" under the Convention "most favored nation" treatment was to be accorded to Convention vessels. Any privileges granted in return for free mail carriage to anyone were to be granted to ships carrying mail free under the Convention.

Commencing on July 1, 1937, when the Ocean Mail Contracts came to an end, rates were finally established by the Postmaster General for the carriage of Convention mails by ships of United States registry (Court's Finding 12). Payment at these rates is sued for in this action. The Orders of the

Postmaster General have the force of statute and make no exception as to the mails of countries requiring free carriage under local laws outlawed or nullified by the Universal Postal Union.

"Free transit" of Convention mails was a part of our Latin American foreign policy but the Director of the International Mail Service which pays these bills has resisted payment wherever possible and has refused payment whenever he claimed that the originating country granted privileges to the United States flag vessels or had local laws requiring free carriage. He completely disregarded the "most favored nation" rights of United States flag vessels.

Finally the resistance of the Director of the International Postal Service became Post Office Department policy. The Annual Report of the Postmaster General for the Fiscal Year Ending June 30, 1955, states:

> The Department will propose to the Postal Union of the Americas and Spain Congress in Bogota, Colombia, October 1955, that the free transit provision of the Convention be made optional to the member countries.
>
> This provision now requires that each country furnish its postal transportation facilities and maritime shipping services free of charge to other member countries. As a consequence, the United States is required to pay its own steamship companies for the service they perform for the other member countries. And as the United States has by far the greater number of ships, this results in disproportionate use of our facilities and the expenditure of approximately $1,200,000 annually. The Department plans to terminate this arrangement in fiscal 1956.

Effective in 1956 the United States at the request of the Post Office took a reservation to the "free transit" provisions of the Convention. This reservation is still in force, but may be withdrawn at any time in furtherance of our present policy, "The Alliance for Progress."

Moore-McCormack Lines, Inc., a citizen of the United States, began operating ships under the United States flag to Argentina, Uruguay and Brazil in 1939. In 1942, service was suspended as a result of war. In 1946 Plaintiff resumed its service to the East Coast of South America. When the vessels of Plaintiff which carried United States mails arrived in the ports of Argentina, Uruguay and Brazil the respective postal administrations delivered to them their Convention mails. These mails were tendered to Plaintiff's vessels for carriage as "free transit" Convention mail and not for transportation because of any local law requiring free carriage which might have been applied to vessels of non-Convention countries.

The services of Plaintiff from 1946 through February 29, 1956 for which it has not received payment amount to $799,370.37 at the rates established by Orders of the Postmaster General. The Plaintiff's present claim is for $279,993.79 out of this total.

The defendant has interposed a "Special Defense of Other Payment," alleging that the plaintiff by agreement with the foreign countries obtained and enjoyed postal packet privileges which entailed the duty of carrying the mail in question without pecuniary compensation. Although entitled to any privileges under "most favored nation" treatment, the plaintiff did not use the privileges which defendant alleges it enjoyed and plaintiff received nothing of value by way of compensation from any country for the services involved in this case.

Count III

The southbound transportation of United States mails which Plaintiff did not receive for carriage but which Plaintiff was entitled to receive under the Merchant Marine Act of 1936.

In this situation the Post Office Department for approximately three years violated the Merchant Marine Act of 1936

by secretly denying to the Plaintiff preferences established under the Act. Plaintiff, which had made all expenditures necessary to carry the mails denied to it, thereby lost revenues of approximately $300,000. The mails involved were carried as "free transit" mails by foreign vessels and the Post Office Department has made no payment to anyone for this service.

The ships of the plaintiff, Moore-McCormack Lines, Inc., insofar as this case is involved, primarily sail southbound from the port of New York to Atlantic ports of South America. They supply regular and speedy sea transportation of mail for the United States Post Office Department and furnish to commerce and industry and the traveling public of the United States the swift and regular mail, passenger and cargo vessels which are the heart of our Merchant Marine in peacetime and provide our most vital sinews in time of war. The plaintiff has thereby become entitled, by providing this service, to the minimum privileges and benefits established by the Congress for those who thus serve the public interest.

The Merchant Marine Act of 1936, the current law requiring that U. S. flag vessels shall be accorded preference in the carriage of United States mails, provides in Section 405 (a) that "all mails of the United States . . . shall insofar as practicable be carried on vessels of United States registry." Applying this mandate of the Congress expressed in the Merchant Marine Act and its predecessor acts, the Post Office Department determined that it was practicable to accord to U. S. flag vessels a forty-eight hour preference for letter mail and a seven-day preference for unimportant prints and parcel post.

This preference was accorded uniformly until February, 1953, and under this preference the speed and regularity of service afforded by the Plaintiff's vessels caused the Plaintiff

to receive all of the mail dispatched by the United States Post Office Department to the countries mentioned. Had the Post Office Department continued to accord this preference the Plaintiff would have continued to carry all of this mail. However, in February, 1953, without notice to the Plaintiff and without any pretense of redetermining the practicability of this preference, the Post Office Department decided no longer to apply this established preference to the Plaintiff's vessels or to other vessels serving the Postal Union of the Americas and Spain countries, although no change was made in the application of the established preference to all other U. S. flag vessels serving countries not members of the Postal Union of the Americas and Spain.

This failure to accord preference as required by the Merchant Marine Act continued until March 1, 1956, when the Post Office Department again began to accord the established preference to the Plaintiff's vessels.

During this period from February, 1953, until March 1, 1956, the Plaintiff's vessels were ready, willing and able to carry all of the United States mail to these countries. The vessels were ready and paid for, the crews were ready and paid for, the stevedores were hired and paid for, the space was ready and available to Postal officials, all necessary expenses of every sort had been incurred and the single result of the failure of the Post Office Department to deliver was to deny to the Plaintiff the revenue from the carriage of this mail.

During this period the Post Office Department delivered some of the mail to the Plaintiff but had it continued to accord to the Plaintiff's vessels their lawfully established preference over foreign flag vessels, the Plaintiff's vessels would have carried in addition 5,100,087 pounds of mail which would have produced $301,858.60 revenue. The Post Office

Department has made no payment to anyone for the transportation of this mail.

REASONS FOR GRANTING THE WRIT

I

The Court of Claims has decided important questions of federal law which are without precedent and are so fundamental that they should be settled only by this Court.

1. In this case the Court of Claims has decided an unprecedented question of Federal law which disregards fundamental concepts of national sovereignty and places the United States in the position of using oppressive foreign laws to strike down both United States law and the rights of United States citizens established under United States law.

The effect of the decision of the Court of Claims is to use laws of Argentina, Uruguay and Brazil to override or engraft exceptions on Orders of the Postmaster General having the force of United States Statutes in order to escape payments due under those Orders to a United States citizen for services performed under the mandate of international agreements.

The United States agreed in the Conventions of the Postal Union of the Americas and Spain to place the ships of the plaintiff at the disposal of Argentina, Uruguay and Brazil for "free and gratuitous transit" of their mail. The Postmaster General established rates of payment for this service by plaintiff's ships. The plaintiff performed the services and sues for payment at these rates. The defense of the Post Office Department is that local laws of the foreign countries forced the plaintiff, a United States citizen, to carry this mail free and granted certain privileges in return and that these privileges therefore constituted payment and the United States will not pay the rates provided by the Postmaster General in his orders.

The Court of Claims has held in effect that the local laws of the foreign countries can be set up by the United States to govern and control the acts and rights of the United States flag vessels of the plaintiff to the complete exclusion of the United States' own international agreements and domestic law on the identical subject.

The plaintiff can find no recorded case in the history of the United States where the United States has thus denied U. S. citizens their rights in U. S. Courts under United States law by itself asserting foreign law against its own citizens. No authority has been cited by the Court or by the United States for this monstrous proposition.

We do however call to the attention of the Court the statement of Mr. Justice Holmes in *Uravic v. Jarka Co.*, 282 U.S. 234, 75 L. Ed. 312, that "It always is the law of the United States that governs within the jurisdiction of the United States, even when for some special occasion this country adopts a foreign law as its own."

The plaintiff respectfully urges that not only the plaintiff but all United States citizens should have the clear and unequivocal protection of the laws of the United States in the Courts of this country – a right so fundamental that it has never before needed expression from this Court.

The local foreign laws relied on by the United States here are oppressive if applied since the plaintiff has been forced to perform services valued at approximately $800,000.00 with payment from no one. The so-called privileges granted under the foreign local "postal packet" laws were of no value to the plaintiff and these laws had long since been outlawed and nullified by the Universal Postal Union to which the United States is a party because of their oppressive burden on world shipping.

Even the foreign governments involved did not attempt to apply their laws to the plaintiff but delivered their mail as Convention mail for "free transit" under the agreement of the United States to place the plaintiff's ship at their disposal. To make the matter even worse the plaintiff was entitled to any privileges granted to free carriers of mail as a "most favored nation" incident to the "free transit" Convention provisions.

In our early history when the Barbary pirates levied tribute on United States ships the United States as a sovereign power furnished them protection. Here the United States abdicates its own sovereignty, nullifies its own laws and agreements, and adopts as its own the oppressive decrees of a foreign power, which the foreign power itself does not even attempt to enforce. Here only the United States itself uses the foreign law to oppress its citizen and leave it without compensation.

2. The Court of Claims has omitted without explanation the findings recommended by its Commissioner that the plaintiff, a United States citizen, was entitled to "most favored nation" treatment from Argentina, Uruguay, and Brazil as a "free and gratuitous" carrier of mail under the Conventions of the Postal Union of the Americas and Spain. The Court thus avoids discussion or apparent decision of the fact that any so-called "packet privileges" accorded to the plaintiff's United States flag vessels were due to it as a matter of right and were not received as compensation for carriage of Convention mails.

The effect of the decision is thus to establish in fact another wholly unprecedented and basic proposition that treatment of United States citizens on an equal basis with citizens of other countries as an incident to international agreement is in some manner an excuse for the United States to claim that this equality of treatment is payment and can be raised

as a bar to the rights of the United States citizen to receive payment due to him under United States law for performing services for the United States in the country when equality is accorded.

The United States offered the services of the plaintiff's vessels to Argentina, Uruguay and Brazil for "free and gratuitous transit" of their mail. The United States very properly asked that its vessels be accorded any courtesies granted to other vessels if this free carriage were provided. The United States also expected to pay its vessels for their services and established rates for the services. The United States has paid under these rates to all United States flag vessels performing these services with the exception of the plaintiff and one other. Its sole excuse is that courtesies or privileges which the United States had arranged were available to the plaintiff and hence the payment concurrently provided for and made to others would not be made to the plaintiff.

In this connection it should be noted that the rates provided for the carriage of this mail by the Postmaster General and sued for here are lower rates than for carriage of United States mail or for the carriage of these mails by foreign flag vessels. Any privileges secured for United States flag vessels under "most favored nation" treatment have certainly been discounted by these lower rates. The Post Office Department now seeks to avoid paying even the lower rates.

Plaintiff respectfully urges that this Court should consider and clarify the rights of the United States to assess against its citizens as payment or offset of United States obligations the benefits received under "most favored nation" treatment.

3. In this case the Conventions of the Universal Postal Union gave to the United States a right to collect from Argentina, Uruguay and Brazil for the services of the plain-

tiff's vessels in the carriage of their mail, this notwithstanding any local law imposing free carriage on the plaintiff's vessels.

When the United States agreed to provide the services of the plaintiff's vessels for "free and gratuitous transit" of the mails of these countries it voluntarily relinquished this right to collect and at the same time assumed the obligation to make the payment itself.

In this situation plaintiff submits that the United States is estopped to deny payment on the theory that the local laws of the foreign countries which could not have been raised against the United States may now be raised by the United States itself against the plaintiff.

This question of Federal law is likewise without precedent and should be decided by this Court.

4. To establish its defense of "other payment" the Court of Claims permitted the United States to assert foreign laws which, if applied to the plaintiff, would have been confiscatory.

Each foreign decree asserted by the United States was confiscatory in that it provided nothing of value to compensate for the substantial service demanded. Preferential berthing was not needed, not requested, and not received in Argentina or Uruguay. The decree of Brazil on which the United States relied clearly was confiscatory as it provided no benefits but merely required certain vessels to carry the mails free. As a result of an entirely different decree, plaintiff's vessels, as did those of all nations of the same class, operated under a reduced schedule of port charges. The Court of Claims has accepted this as a *quid pro quo*. Even if the Court of Claims were correct in this assumption, the readily ascertainable savings in port charges amounted to only a few thousand dollars which is not used *pro tanto*, but which has been used to bar

collection of hundreds of thousands of dollars of services. The plaintiff would have been paid without question under the Orders of the Postmaster General but for the assertion of foreign law as providing payment.

The Commissioner found that the plaintiff had received no compensation for its services from anyone. (Appendix B, p. 19, Finding 21.)

To allow the theoretical benefits of a foreign law, neither used nor having monetary value to offset and bar payment is clearly a taking of the property of the plaintiff without just compensation. If anything of value were proved by the United States to have been received by the plaintiff, and if it were chargeable to the plaintiff, it could at the most be chargeable *pro tanto*. To do more is a clear denial of just compensation and is without precedent or authority. Plaintiff submits that this Federal question should be settled by this Court.

5. The Merchant Marine Act of 1936, Sec. 405 (a) (46 U.S.C.A. 1145), requires that "all mails of the United States shall, insofar as practicable, be carried on vessels of United States registry." Under the preferences established by the Postmaster General as practicable the plaintiff was entitled to carry all United States mails dispatched southbound to the ports served by the plaintiff.

For a period of three years the Post Office Department secretly withdrew this preference and loaded approximately $300,000 worth of mail which plaintiff was entitled to receive on foreign vessels to whom it made no payment.

The United States has neither plead nor proved any excuse for this secret and unlawful denial of preference.

The facts have been established but the Court of Claims has held that no remedy is available to the plaintiff for its

proved money loss of $301,858.60 in net revenue above all costs.

The Court of Claims has held that Section 405 (a) of the Merchant Marine Act of 1936 is in the nature of a congressional declaration of policy to guide the Post Office Department and grants no rights to any particular organization operating ships of United States registry (Appendix A, p. 10).

The question has never been before this or any other Court except the Court of Claims in *Grace Line, Inc. v. United States*, No. 218-58 decided November 1, 1961, by that Court.

Plaintiff knows of no procedure by which its rights under the preference statute can be protected against this secret and unlawful denial of preference except by means of this suit. The plaintiff asks for the preference which the Postmaster General in his lawful discretion established for all United States flag vessels and under which the plaintiff has shown individual performance and entitlement. Had the Post Office Department notified the plaintiff of its intended denial of preference, the plaintiff might have obtained redress by one of the extraordinary legal remedies or by resort to equity, but in the circumstances of this case, plaintiff is left wholly without remedy if it may not recover under its Count III in this cause.

An important question of Federal law as to the rights of the United States Merchant Marine to obtain relief is involved which has not been but should be settled by this Court.

II

The Court of Claims has decided a federal question in a way in conflict with the applicable decisions of this Court.

1. The foreign local laws invoked by the United States against the plaintiff in this case were not applied by those

countries against the plaintiff. In each of those countries the Conventions of the Universal Postal Union and of the Postal Union of the Americas and Spain had the status of treaties and were superior to local law.

Each country has stated unequivocally that the mails in question were delivered to the plaintiff's vessels under the provisions of the Conventions as Convention mail. These applications and interpretations of local law in Argentina, Uruguay and Brazil were made by high government officials, in two instances of the rank of Attorney-General.

The Court of Claims has not only applied the foreign local laws to the plaintiff but has completely disregarded the application and interpretation of these laws in the countries of their origin as well as the fact that the effect of these laws had been nullified by international agreements.

The Court of Claims has wholly departed from established principles of law in applying foreign local law where the government in question did not do so and in disregarding official foreign interpretations. This is contrary to this Court's decision in *U. S. v. Pink*, 315 U.S. 203, 86 L. Ed. 799, where it was held that an official declaration by the appropriate Russian officials was conclusive as to the intended extra territorial effect of a Russian decree.

III

The Court of Claims has so far departed from the accepted course of judicial proceedings as to call for the exercise of this Court's power of supervision.

1. The plaintiff's petition in this prayed for payment at rates established by the Postmaster General for the services performed by the plaintiff.

The answer of the United States asserted a "special defense of other payment" alleging that the petitioner has by agreement with the foreign countries involved, obtained and enjoys special privileges . . . which entail the duty under the law of the country which grants the privilege of carrying the mail of that country without special pecuniary compensation . . . all constituting payment in kind by the country tendering the mail . . . ."

The plaintiff established without question the amount of mail carried and the payment due at the Postmaster General's rates which cover all Convention mail and make no exception for Argentina, Uruguay or Brazil.

The United States failed to show that the plaintiff had received anything of value or the extent of that value, if received. The plaintiff even established by uncontroverted evidence that it received nothing of value in any of the three countries and that any privileges were granted under "most favored nation" treatment.

The Court of Claims in its opinion has completely shifted the burden of proof of the government's special defense of other payment from the United States to the plaintiff by stating (Appendix A, p. 5) "Since the burden is on plaintiff to show there was an implied contract under which the United States agreed to pay it for the carriage of these mails, it must show that it has not been compensated for the carriage of them by the acceptance of packet privileges, the granting of which obligated plaintiff to carry them without further compensation."

The balance of the Court's opinion below is based on the asserted failure of the plaintiff to establish the non-existence of the special defense alleged by the United States. The United States was never required to prove its defense — and, indeed, it could not.

Petitioner respectfully urges that the Court of Claims has made a gross and unwarranted departure from accepted rules of legal procedure by thus shifting the burden of proof of an affirmative defense from the defendant to the plaintiff and thereby wholly departing from the issues framed by the pleadings and that this Court should exercise its power of supervision to require customary rules and techniques of procedure and of decision.

2. Throughout the trial of this cause the plaintiff objected to any showing of foreign local law since the Postal Conventions entered into by the United States pursuant to statutory authority and the Orders of the Postmaster General issued pursuant to statutory authority and having the force of law made no exception based on the existence or non-existence of foreign local law.

Plaintiff has contended throughout this cause and now urges that proof of foreign law is incompetent to be received in a Court of the United States to engraft exceptions on United States laws or to bar the rights of United States citizens under those laws.

The plaintiff can find no case in the history of the United States where such evidence has been held to be competent or admissible and plaintiff suggests that this is a departure from established legal procedure requiring the intervention of this Court.

3. With reference to the laws of Brazil, which were considered by the Court of Claims over the objection of the plaintiff, that Court applied, in effect, a *stare decisis* rule by stating that its opinion in *Moore-McCormack Lines, Inc. v. U. S.*, 119 Ct. Cl. 484, was controlling. The law now in question was not in force at the time of the prior decision (which involved only a narrow stipulated issue) although it was sub-

stantially a re-write of the former law. Two major circumstances had intervened as to Brazil. First, a new Brazilian constitution had been adopted containing a just compensation provision similar to our Fifth Amendment. Expert testimony established that the former law, if interpreted as the Court of Claims interprets it, would now be unconstitutional. Second, the benefits thought by the Court below to attach to free mail carriage were discovered and proved to be available only to Brazilian national vessels and not to the plaintiff.

Plaintiff believes that it is improper to apply *stare decisis* to the interpretation of foreign law when the basic foreign law has been materially changed and when the earlier decision is shown to be based on a mistake of fact.

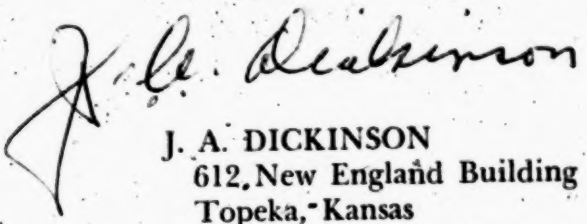
CONCLUSION

This case presents Federal questions of grave importance to the constantly increasing number of citizens of the United States who engage in our expanding intercourse with other nations. There are few guideposts in our laws or decisions as to the treatment and application of foreign laws and as to the impact of such laws on the rights of United States citizens. This case is unique in that here the United States seeks to rely on foreign law but the principle is equally important to citizens who may also seek to rely on such laws in United States Courts.

Likewise, citizens are entitled to know whether and to what extent imperative congressional mandates are binding only on citizens and may be ignored by government officials without citizen redress.

Petitioner prays that a writ of certiorari should issue in this case to the Court of Claims.

Respectfully submitted,



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APPENDIX A

In the United States Court of Claims

No. 572-57

(Decided April 4, 1962)

MOORE-McCORMACK LINES, INC., v. THE UNITED STATES

J. A. Dickinson for plaintiff. *Paul C. Aiken* was on the briefs.

Thomas F. McGovern, with whom was *Assistant Attorney General William H. Orrick, Jr.*, for the defendant.

OPINION

WHITAKER, *Judge*, delivered the opinion of the court:

This is a suit to recover compensation for the carriage of mails from ports on the east coast of South America to ports on the Atlantic coast of the United States. Plaintiff, a steamship company, whose vessels fly the flag of the United States, is the same corporation as was the plaintiff in *Moore-McCormack Lines, Inc.* v. *United States*, 119 Ct. Cl. 473, *cert.* denied, 342 U.S. 876. In that suit plaintiff sought to recover compensation for the carriage of outbound mails from ports of Argentina, Brazil, and Uruguay for years prior to 1942, at which time plaintiff's service was interrupted because of World War II.

In the earlier suit the entire claim as to the northbound mails from Argentina and part of the claim as to northbound mails from Uruguay were abandoned by plaintiff, pursuant to a stipulation between the parties, under which it was agreed that, since Argentina and, until 1940, Uruguay, required plaintiff to carry their mails without further charge, in consideration of the granting by those countries of certain packet privileges to plaintiff, no payment was due from the

United States for the carriage of Argentine mails and, for the period prior to 1940, of Uruguayan mails. In 1940 Uruguay had suspended its packet privilege law, thereby relieving the plaintiff from the obligation of carrying its mails without charge and, hence, for the period subsequent to 1940 the United States conceded liability, under the Postal Union Convention, to pay the charges.

The parties also agreed that, if a Brazilian decree of June 3, 1941, required plaintiff to carry Brazilian mails gratuitously, then the United States was not liable to compensate plaintiff therefor. We construed the Brazilian decree as requiring the gratuitous carriage of the mails; hence, we held, pursuant to the stipulation, the United States was not liable for the carriage of these mails during the period this decree was in effect.

In Count I of its petition in this action plaintiff seeks to recover from the United States compensation for the carriage of outbound mails from ports of Argentina, Brazil and Uruguay for years subsequent to World War II, beginning in 1946 when plaintiff's service was resumed, and ending on March 1, 1956, when the United States withdrew from the Postal Union.

In Count II plaintiff sues to recover expenses incurred in the cartage of incoming South American mails from its piers to post offices in the United States.

Count III is a claim for money plaintiff says it would have received for the carriage of mails had not the Post Office Department improperly diverted such mails to foreign vessels. Plaintiff says this was in violation of section 405(a) of the Merchant Marine Act of 1936, 49 Stat. 1985, which gave its vessels preference over those of foreign registry.

COUNT I

Except for the years 1942 through 1946, during which plaintiff's vessels were operated by the United States, pursuant to requisition for use during World War II, plaintiff has been continuously engaged for many years in the carriage of mails between the ports of Rio de Janeiro, Brazil; Buenos Aires, Argentina; and Montevideo, Uruguay, and various ports on the Atlantic coast of the United States, particularly New York, on vessels flying the flag of the United States.

In accordance with 5 U.S.C. § 372, the Postmaster General of the United States negotiated and concluded with the governments of certain Central and South American countries, including that of Argentina, Brazil and Uruguay, several postal conventions, which, beginning with the Second Congress of the Pan American Postal Union held in Mexico in 1926, became known as the Postal Union of the Americas and Spain.

The Convention of the Postal Union of the Americas and Spain of December 22, 1936, ratified by the Postmaster General on August 12, 1937, and approved by the President on August 20, 1937 (50 Stat. 1657), provided in part:

ARTICLE 3

Free and gratuitous transit

1. The gratuity of territorial, fluvial and maritime transit is absolute in the territory of the Postal Union of the Americas and Spain; consequently, the countries which form it obligate themselves to transport across their territories and to convey by the ships of their registry or flag which they utilize for the transportation of their own correspondence, without any charge whatsoever to the contracting countries, all that which the latter may send to any destination.

2. In cases of reforwarding, the contracting countries are bound to reforward the correspondence by the ways and means which they utilize for their own dispatches.

* * * * *

This provision was incorporated without change in the Postal Convention of September 25, 1946, ratified by the Postmaster General on February 20, 1947, and approved by the President on February 27, 1947 (61 Stat. 3505).

The Postal Convention of November 9, 1950, ratified by the Postmaster General on June 7, 1951, and approved by the President on June 22, 1951, provided in part:

ARTICLE 3

Free and gratuitous transit

1. The gratuity of territorial, fluvial and maritime transit is absolute in the territory of the Postal Union of the Americas and Spain; consequently the countries which form it obligate themselves to transport across their territories and to convey by ships of their registry

or flag, without any charge to the contracting countries, all the correspondence which the latter may send to any destination whatsoever. However, this gratuity of transit will not be applied to the subsequent maritime transmissions of correspondence destined for a third country which is not a member of the Postal Union of the Americas and Spain in cases where a reshipment or transfer may be necessary, or justified expenses of handling may arise,

2. Likewise, when services of foreign Administrations are required for the subsequent conveyance of the closed mails, collection can be made from the Administrations of origin of the same amounts which the intermediary Administrations may be compelled to pay therefor.

3. In cases of onward dispatch, the contracting countries bind themselves to forward the correspondence by the most rapid ways and means which they utilize for their own mails.

* * * * *

The obligation of the United States to compensate plaintiff for the carriage of the mails in question, if any, arises under these postal conventions.

Plaintiff says that the United States, acting through the Postmaster General, by entering into the various postal conventions providing for "free and gratuitous transit" of convention mails on vessels of its flag and by the issuance of orders providing for payment for the carriage of such mails by vessels of its flag, impliedly agreed to compensate plaintiff for the carriage of the mails in issue.

On the other hand, since and before the decision in the first *Moore-McCormack* case, it has been defendant's position that where the local law of a country signatory to the conventions imposes upon a steamship company the obligation of carrying its mails without further compensation, in exchange for the granting of packet privileges for the company's vessels, the United States is relieved of its obligation to pay for the carriage of such mails. For the years involved in this action, defendant contends that under the local laws of Argentina, Brazil and Uruguay, plaintiff was required to carry their mails gratuitously in exchange for packet privileges or other preferred treatment for its vessels.

In the earlier suit plaintiff abandoned its entire claim for the carriage of Argentine mails and that part of its claim

for the carriage of Uruguayan mails during the period that country's local packet laws were in force. We were, consequently, not called upon to decide how the local laws of those two countries affected the obligation of the United States. For this reason the prior action is not *res adjudicata* as to plaintiff's claim for the carriage of Argentine mails and Uruguayan mails.

The only question before us in the former suit was whether or not a Brazilian decree of June 3, 1941, required plaintiff to carry Brazilian mails gratuitously in return for certain privileges. We held that the decree did require plaintiff to carry the mails of that country without compensation in exchange for preferred berthing rights and exemption from lighthouse dues and local taxes. Plaintiff now says that as the result of the adoption of a new constitution by Brazil in 1946, that country could no longer constitutionally require plaintiff to carry its mails gratuitously. If so, then the former decision is not *res adjudicata* as to plaintiff's claim for the carriage of Brazilian mails in this action.

Since there was no express contract between plaintiff and the United States, in order to recover, plaintiff must show that there was an an agreement implied-in-fact on the part of the United States to pay for the carriage of the mails involved. *Grace Line, Inc.*, v. *United States*, No. 218–58, decided November 1, 1961. No contract can be implied for payment by the United States if plaintiff has already been paid for the carriage of the mails by the countries which demanded plaintiff's services. Plaintiff cannot collect twice for the rendition of the same services.

The crucial inquiry then is: Did plaintiff receive packet privileges or other preferred treatment for its vessels in return for which it assumed the obligation of gratuitously carrying the mails of Argentina, Brazil and Uruguay?

Since the burden is on plaintiff to show there was an implied contract under which the United States agreed to pay it for the carriage of these mails, it must show that it has not been compensated for the carriage of them by the acceptance of packet privileges, the granting of which obligated plaintiff to carry them without further compensation. This requires plaintiff to show what the law of these three countries is with respect to packet privileges, or to show

that it did not receive packet privileges or other remuneration from the countries demanding that it carry their mails. Foreign law must be proved as any other fact. *Cuba R.R. Co.* v. *Crosby*, 222 U.S. 473.

That this burden is on plaintiff is particularly true in this case, in view of our prior decision in *Moore-McCormack Lines Inc.*, v. *United States*, *supra*, wherein it was stipulated the receipt of packet privileges precluded recovery under the laws of Argentina and Uruguay, and wherein we held this likewise precluded recovery under the laws of Brazil. Plaintiff was thus on notice that the United States would refuse to pay for the carriage of these mails, if this situation continued.

We shall consider first plaintiff's claim for the carriage of Argentine mail.

Plaintiff did nothing to carry its burden of proving that Argentina did not require it to carry the mail of that country gratuitously in exchange for packet privileges. On the contrary, there is in evidence, as defendant's exhibit 11, a pamphlet in Spanish entitled "Digesto Maritimo Y Fluvial" relating to packet privileges. According to the witness, Mr. Bosch, counsel for the Consulate General of Argentina in New York, by whom it was identified, it was issued by the Maritime National Prefecture, an agency of the executive department of the Argentine Government. The witness testified that this pamphlet was an official publication of the Argentine Government. In support of this statement he said the document carried on the cover and flyleaf the heading, "Republic of Argentina, Maritime National Prefecture," and it bore the seal of the Republic of Argentina. The document was also prefaced by decree No. 125.571 issued by the President of Argentina on February 16, 1938,[1] which fact further supports the statement of the witness.

Plaintiff does not show that this was not a valid and binding regulation of the Government of Argentina.

Article 421 of the "Digesto Maritimo Y Fluvial", as translated into English by Mr. Bosch, reads in part as follows:

> All foreign ships with postal packet privilege shall be subject to the following obligations: (A) to carry gratuitously the mail and postal matter delivered to

[1] No translation of this decree is in evidence.

them by the general post office and telegraph for their ports in their itinerary or for the ports which they shall come to in transit.

Plaintiff's contention that there was no packet privilege law in Argentina is plainly untenable. This was recognized in the letter of Albert F. Crystal, plaintiff's vice president to the Assistant Postmaster General, dated January 27, 1956, requesting that plaintiff be designated a "third service", the meaning and effect of which is not pertinent here. In his letter Crystal stated, "In Argentina no payment for postal transportation can be expected because of a local postal packet privilege law." Plaintiff thus acknowledged the existence of such a law. In fact, during 1948, plaintiff actually applied for and was granted postal packet privileges for its steamships, "Argentina", "Brazil", and "Uruguay".

Not only has plaintiff failed to prove it did not receive packet privileges from Argentina in return for the gratuitous carriage of its mails, but the defendant's evidence is unchallenged, and, being unchallenged, it affirmatively establishes the fact that plaintiff was obligated to carry the mails of that country gratuitously, in exchange for the granting of packet privileges for its vessels.

We cannot agree with the Trial Commissioner that "there is no satisfactory evidence in the record that Argentina, under its laws, required ships flying the flags of countries signatory to the Postal Convention of the Americas and Spain to carry mail without compensation in exchange for the granting by Argentina of packet privileges."

We turn now to plaintiff's claim for the carriage of Uruguayan mails.

As in the case of Argentine mails, plaintiff has done nothing to show it did not receive packet privileges from Uruguay and that receipt of them did not obligate it to carry Uruguay's mails without further compensation.

However, there are in evidence two decrees issued by the President of the Republic of Uruguay, one issued on November 7, 1946, and the other issued on January 3, 1952. The witness Bosch testified that both are valid and existing laws in Uruguay, binding upon aliens doing business in Uruguay.

Although no translation of the 1946 decree from Spanish is in evidence, the translation of the 1952 decree into English

is in evidence. In Article 1° of the latter decree the President of Uruguay decreed:

> That the Regulations for the Concession of Patents of Packet Privileges be approved as worded in administrative documents Series * * * in substitution of the actual Regulations for Packet Privileges approved by Decree N° 8011 of 7th November, 1946.

Article 11 provides:

> All national or Foreign vessels holding Packet Privileges of Category "A", or whose Petition for same is under consideration, or as the case may be, their Agents', are subject to the following obligations:
>
> a) To carry free of charge all Mails and Parcel Post packages delivered to them by the General Postal Authorities for the ports of their itinerary or ports of call in transit.—It is understood that this obligation applies exclusively to Mails and Parcel Post from or for ports of the Republic * * *.

It is unnecessary for us to consider the different categories of packet privileges under this decree, since Article 12 makes Article 11, clause a) applicable to vessels holding Category B packet privileges, and Article 13 requires vessels holding Category C packet privileges to carry the mails free of charge as in the case of vessels holding Category B packet privileges.

In the letter of January 27, 1956, from plaintiff's vice president to the Assistant Postmaster General, which we referred to in regard to the claim for the carriage of Argentine mails, it is stated: "Our representatives in Uruguay have advised that the local postal administration under local laws will not pay us for any postal transportation." Plaintiff thus recognized that it would not be compensated for the carriage of the Uruguayan mails in issue, except by the grant of packet privileges. During the period involved in this suit, plaintiff applied for and was granted packet privileges for 17 of its vessels.

We think the evidence establishes the fact that plaintiff was obligated to transport the Uruguayan mails "free of charge" in return for the packet privileges it applied for and received. Hence, plaintiff is not entitled to recover for the carriage of the Uruguayan mails.

As to the Brazilian mails, plaintiff says that any law requiring it to carry these mails gratuitously was in violation of a new constitution adopted by Brazil in 1946. It also says that in the earlier *Moore-McCormack* case, *supra*, the court construed an executive decree issued in 1941, while in this case a 1951 executive decree is involved.

With reference to plaintiff's contention that the provision for gratuitous carriage of its mails is unconstitutional, in the first place, we would be loathe to say that any decree or legislative enactment of a foreign country contravened the constitution of that country. Certainly we would not say so where the law had not been declared to be unconstitutional by authorities in that country with power to do so.

But, apart from this, it seems plain that the Executive Decree, which obligates plaintiff to carry Brazilian mails without further compensation beyond the receipt of packet privileges, does not violate that provision of the Brazilian Constitution upon which plaintiff relies. It is a provision similar to the provision of the Constitution of the United States, which prohibits the taking of private property without compensation. The decree does provide for compensation for the service demanded, as we said in our opinion in the former case. We there said:

> The obligation cast upon carriers such as plaintiff by this decree was not without consideration. It was an obligation imposed in return for the grant of certain packet privileges. Among those privileges were exemption from lighthouse dues, charity taxes imposed on each sailor and officer, and the grant of preferred berthing rights. By the acceptance of those privileges plaintiff obligated itself to carry Brazilian mails gratuitously * * *. [119 Ct. Cl. 484.]

The 1951 decree was essentially a rewrite of the 1941 decree; the 1951 decree did not change the law as contained in the 1941 decree. Consequently, insofar as the claim for the carriage of Brazilian mails is concerned, our prior holding as to the effect of Brazilian law is controlling in this action.

There is no evidence in the record of whether plaintiff actually applied for or received packet privileges or other preferred treatment for its vessels from the Brazilian Gov-

ernment during the period for which payment is sought for the carriage of the mails. But, as in the case of plaintiff's claims for the carriage of Argentine and Uruguayan mails, plaintiff has the burden of proving that there was an implied promise by the United States to compensate it for the carriage of the mails of Brazil. In order to establish this, it was necessary for plaintiff to prove that it has not received compensation for the carriage of such mails. Not having proved this, plaintiff has not shown that any payment for the carriage of the Brazilian mails is due from the United States. It follows that plaintiff cannot recover for the carriage of these mails.

COUNT II

This is a claim for the expenses incurred by plaintiff in transporting incoming South American mails from its piers to post offices in the United States.

Since we have found under Count I that plaintiff has already been compensated for the carriage of these mails, it is clear that plaintiff cannot recover for the trucking of the mails from its piers to the post offices.

The carriage of the mails for which plaintiff has been compensated begins with the delivery of the mails to plaintiff's vessels by the postal authorities of the country concerned and ends with the delivery of those mails to the United States postal authorities. It is inconceivable to us that the South American postal authorities, when they tendered their mails to plaintiff, could have contemplated that their mails would be brought to plaintiff's piers and left there. They had to be delivered to the Post Office. Cf. *United Fruit Co.* v. *United States*, Nos. 460–56, 568–57, decided April 7, 1961 *cert.* denied March 19, 1962.

COUNT III

In Count III plaintiff seeks to recover compensation it says it would have otherwise been entitled to had it been granted the preference required by section 405(a) of the Merchant Marine Act of 1936, *supra*, which provides that "insofar as practicable" all mails of the United States shall be carried on vessels of United States registry.

In *Grace Line, Inc.* v. *United States*, *supra*, we held that section 405(a) does not grant a right to any particular organi-

zation operating vessels of United States registry to force the United States to grant it a 100 percent preference in the carriage of United States mails, but that the section appears to be more in the nature of a congressional declaration of policy to guide the Post Office Department in the discharge of its duties. That decision is controlling here and we hold that plaintiff has shown no basis for recovery under Count III.

Plaintiff's petition will, therefore, be dismissed.

It is so ordered.

REED, *Justice (Ret.)*, sitting by designation: DURFEE, *Judge*; LARAMORE, *Judge*; and JONES, *Chief Judge*, concur.

FINDINGS OF FACT

The court, having considered the evidence, the report of Trial Commissioner William E. Day, and the briefs and argument of counsel, makes findings of fact as follows:

1. At all times material herein plaintiff was, and is, a corporation organized and existing under the laws of the State of Delaware. Plaintiff is the same corporation as was plaintiff in *Moore-McCormack Lines, Inc. v. United States*, No. 46280, 119 Ct. Cl. 473, *cert. denied*, 342 U.S. 876.

2. At all times material herein plaintiff, beginning in 1946, was engaged in the transportation, by ships registered under the flag of the United States, of passengers, cargo and mail on a trade route between various United States Atlantic ports, particularly New York, and ports on the east coast of South America, more particularly Montevideo, Buenos Aires, Santos, Rio de Janeiro, Bahia, and Belem among others.

3. Beginning in the year 1946 and continuing through February 29, 1956, plaintiff was tendered by the Post Office Department and carried United States mails southbound to the ports of Rio de Janeiro, Brazil; Buenos Aires, Argentina; and Montevideo, Uruguay; from the port of New York on vessels documented under the laws and carrying the flag of the United States, and was paid for the carriage, all pursuant to the postal laws and regulations.

4. Plaintiff commenced the service described in the foregoing findings 2 and 3 in the year 1939 and continued it through part of 1942 until its vessels were requisitioned by the United States during World War II. Plaintiff's vessels

resumed the suspended service in the year 1946 and has continued it to the present time.

5. In accordance with 5 U.S.C. § 372, the Postmaster General of the United States negotiated and concluded with the governments of Panama, Colombia, Venezuela, Ecuador, Bolivia, Peru, Chile, Brazil, Uruguay, Argentina, Paraguay and other governments, postal conventions known as the Pan American Postal Union, First Congress, Buenos Aires, 1921, and Second Congress, Mexico, 1926, and Postal Union of the Americas and Spain, Third Congress, Madrid, 1931, Fourth Congress, Panama, 1936, Fifth Congress, Rio de Janeiro, 1946, and Sixth Congress, Madrid, 1950. The ports of Brazil, Uruguay and Argentina are served by plaintiff; Paraguay, which has river ports only, is served by the plaintiff through the port of Buenos Aires, Argentina.

6. Article 3 of the Convention of the Postal Union of the Americas and Spain, signed at Madrid on November 10, 1931, and approved by the President on February 9, 1932, (47 Stat. 1925), provided in part as follows:

ARTICLE 3

Free and gratuitous transit

1. The gratuity of territorial, fluvial and maritime transit is absolute in the territory of the Postal Union of the Americas and Spain; consequently, *the countries* which form it *obligate themselves* to transport across their territories and *to convey by the ships of their registry or flag* which they utilize for the transportation of their own correspondence, without any charge whatsoever to the contracting countries, all that which the latter may send to any destination. [Italics supplied.]

2. In cases of reforwarding, the contracting countries are bound to reforward the correspondence by the ways and means which they utilize for their own dispatches.

* * * * *

7. Article 3 of the Convention of the Postal Union of the Americas and Spain, signed at Panama on December 22, 1936, ratified by the Postmaster General on August 12, 1937, and approved by the President on August 20, 1937 (50 Stat. 1657), was identical to Article 3 of the 1932 Convention as quoted in finding 6.

8. Resolutions of The Fourth Americo-Spanish Postal Congress, 50 Stat. 1691, provided in part as follows:

* * * * *

IV

That they try to obtain from steamship companies of countries foreign to the Postal Union of the Americas and Spain which transport their correspondence a reduction in the present rates, and their agreement in no case to collect a sum per weight-unit greater than that which they collect from the country of origin, except in cases where, due to packet or other privileges, said companies are obligated to perform gratuitous transportation.

* * * * *

9. Article 3 of the Convention of the Postal Union of the Americas and Spain, signed at Rio de Janeiro, September 25, 1946, ratified by the Postmaster General, February 20, 1947, and approved by the President, February 27, 1947 (61 Stat. 3505), was identical to Article 3 of the 1932 Convention, as quoted in finding 6.

10. Article 3 of the Convention of the Postal Union of the Americas and Spain, signed at Madrid on November 9, 1950, ratified and approved by the Postmaster General on June 7, 1951, and approved by the President on June 22, 1951, provided in part as follows:

ARTICLE 3

Free and gratuitous transit

1. The gratuity of territorial, fluvial and maritime transit is absolute in the territory of the Postal Union of the Americas and Spain; consequently the countries which form it obligate themselves to transport across their territories and to convey by ships of their registry or flag, without any charge to the contracting countries, all the correspondence which the latter may send to any destination whatsoever. However, this gratuity of transit will not be applied to the subsequent maritime transmissions of correspondence destined for a third country which is not a member of the Postal Union of the Americas and Spain in cases where a reshipment or transfer may be necessary, or justified expenses of handling may arise.

2. Likewise, when services of foreign Administrations are required for the subsequent conveyance of the closed mails, collection can be made from the Administrations of origin of the same amounts which the intermediary Administrations may be compelled to pay therefor.

3. In cases of onward dispatch, the contracting countries bind themselves to forward the correspondence by the most rapid ways and means which they utilize for their own mails.

* * * * *

11. Appendix II to the brief of the United States filed in this court on June 30, 1942, in *United Fruit Company* v. *United States*, No. 44232, 103 Ct. Cl. 303, relates to interpretations of Article 3 of the Madrid Convention and reads in part, as follows:

APPENDIX II

Interpretations of Article 3 of the Conventions by The United States

Under Authority of U.S.C., Title 5, Section 372, which reads:

For the purpose of making better postal arrangements with foreign countries, or to counteract their adverse measures affecting our postal intercourse with them, the Postmaster General, by and with the advice and consent of the President, may negotiate and conclude postal treaties or conventions, and may reduce or increase the rates of postage or other charges on mail matter conveyed between the United States and foreign countries: *Provided*, That the decisions of the Postmaster General construing or interpreting the provisions of any treaty or convention which has been or may be negotiated and concluded shall, if approved by the President, be final and conclusive upon all officers of the United States. There have been two official interpretations of Article 3 of the Convention. No. 1 interpretation of Article 3 (approved by the President May 19, 1936) reads as follows:

is interpreted and construed to mean that gratuity of maritime transit does not depend on whether territorial transit is or is not also furnished for the same mails; on the other hand, gratuity of territorial (or fluvial) transit does not depend on whether maritime transit is or is not also furnished for the same mails.

The context of Section 1 above quoted clearly indicates that "and" (underlined) is used disjunctively for "or"

and not conjunctively. In other words "and" (underlined) is not used to connect "the countries * * * obligate themselves to transport across their territories" and "to convey by the ships of their registry or flag which they utilize for the transportation of their own correspondence, without any charge * * " so as to provide that gratuity of maritime transit is contingent on the mails involved being also transported over the territory of the country whose flag is flown by the ships performing the maritime transit and that in connection with such territorial transit gratuity of territorial transit in addition to gratuity of maritime transit must be granted by the same Postal Administration to the same mails, or else no gratuity of maritime transit (or territorial transit) is granted.

The context of the said Section 1 clearly shows that the gratuity of transit granted thereby to maritime, territorial and fluvial transit is without any qualification that such gratuity of transit depends on maritime and territorial (and fluvial) transit being furnished for the same mails; this is clearly indicated by the statement in the first phrase of the section, that is, "The gratuity of territorial, fluvial and maritime transit is absolute * * *"

No. 2 Interpretation (approved by the President November 17, 1936) reads:

is further interpreted and construed to mean that, having ratified the aforesaid Convention after express instruction to its delegates to the Third (Madrid, 1931) Pan American Postal Congress to concede complete gratuity of transit by ships of American registry to mails of countries of the Pan American Postal Union (name changed to "Postal Union of the Americas and Spain" by the said Madrid, 1931, Congress), as hereinafter set forth (i.e., in translation, from the Documents of the Third Pan American Postal Congress, Madrid, 1931, Minutes of the Seventh Session of the First Committee), the United States of America thus accepted the interpretation of the rest of the delegations to that Congress and obligated itself to transport free of cost to the country of origin all the mails consisting of articles of correspondence (letters, post cards, prints, commercial papers, samples without value, and small packets) of other Americo-Spanish countries adhering to the Convention in question (for any destination) by steamships of American registry utilized by the United States for the transportation of its own correspondence, re-

gardless of whether or not the conveying steamships of American registry are then under contract to carry mails of the United States of America and whether or not the foreign mails in question are embarked on such American steamships at a foreign or a United States port and whether or not such mails ever reach a port of the United States or any United States Federal postal agency en route to their destinations.

This interpretation has due regard to the memorandum relative to gratuity of transit which was signed (on their return from Madrid) by the delegates of the United States to the aforesaid Madrid, 1931, Congress, that is, by Mr. W. Irving Glover, then Second Assistant Postmaster General, and Mr. Eugene R. White, then Director of International Postal Service. The memorandum mentioned reads as follows:

"After an extended and thorough consideration and discussion of the free transit provisions (Article 3 of the Convention of the Americas and Spain) the Delegates of the Madrid Congress were in unanimous agreement that all the transportation facilities used by any one postal administration wherever they may reach on land or water are placed freely at the disposition of the administrations of the other signatory countries without charge, except where payment has to be made by the intermediary country for the use of vessels foreign to its flag."

12. Pertinent provisions of orders of the Postmaster General as to payment for carriage of mail are quoted below:

OFFICE OF THE POSTMASTER GENERAL,
Washington, May 12, 1937.

AMENDMENT TO THE POSTAL LAWS AND REGULATIONS

Order No. 10387.

Paragraph 2, Section 2242 of the Postal Laws and Regulations, is amended to read as follows, effective July 1, 1937:

"2. Unless otherwise specifically provided, payment shall be made for the transportation of United States mails and foreign closed transit mails on steamships of both United States registry and foreign registry at the rates of 5.25 cents a pound for mails consisting of letters and post cards and 0.7 cents a pound for mails consisting of other articles, including parcel post, for distances up to 300 nautical miles; 14 cents a pound for mails consisting of letters and post cards and 1.75 cents a pound for mails consisting of other articles, including

parcel post, for distances from 300 up to 1,500 nautical miles, and 21 cents a pound for mails consisting of letters and post cards and 2.8 cents a pound for mails consisting of other articles, including parcel post, for all distances exceeding 1,500 nautical miles."

Paragraph 3 of said section is omitted, and present paragraphs 4 and 5 are renumbered 3 and 4, respectively, effective July 1, 1937.

JAMES A. FARLEY,
Postmaster General.

INSERT NO. 443. ORDER NO. 12598. FEBRUARY 21, 1939.

Effective March 1, 1939, the Postal Laws and Regulations are amended so as to omit present paragraphs 3 and 4 from Section 2242, and substitute therefor new paragraph 3, as follows:

"3. As an exception to the rates specified in paragraph 2 of this section, payment shall be made at the rates specified in the schedule stated below (unless service be covered by contract), for service by vessels of United States registry and by vessels of foreign registry which are entitled to pay from the United States, in transporting mails the United States is obligated to convey, that may be performed:

* * * * * *

"(b) From any port in the countries signatory to the Conventions of the Postal Union of the Americas and Spain (except continental United States, Canada, and Spain) to any other port (except ports in continental United States, Canada, and Spain); also from ports in the West Indies or South America of countries not signatory to the Conventions of the Postal Union of the Americas and Spain, to any other port (except ports in continental United States, Canada, and Spain), covering regular mails originating in signatory countries;

* * * * * *

	Letters and cards	Other articles including parcel post where conveyance is obligated
	Cents per lb.	*Cents per lb.*
Up to 600 nautical miles	4	1.00
From 600 to 1,800 nautical miles	7	1.25
Over 1,800 nautical miles	12	1.75

* * * * * *

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INSERT NO. 447. ORDER NO. 12755. APRIL 7, 1939.

Order No. 12598 of February 21, 1939, substituting new paragraph 3 to section 2242 of the Postal Laws and Regulations, is modified so as to have subparagraph (b) of said paragraph 3 read as follows:

"(b) From any port in the countries signatory to the conventions of the Postal Union of the Americas and Spain (except continental United States, Canada, and Spain, and Havana, Cuba, for mails forwarded from continental United States for transshipment) to any other port (except ports in continental United States, Canada, and Spain, and Havana, Cuba, for mails destined to the United States); also from ports in the West Indies or South America of countries not signatory to the conventions of the Postal Union of the Americas and Spain, to any other port (except ports in continental United States, Canada, and Spain, and Havana, Cuba, for mails destined to the United States), covering regular mails originating in signatory countries."

AMENDMENTS TO THE POSTAL LAWS AND REGULATIONS

CHANGE IN RATES ALLOWED STEAMSHIP COMPANIES FOR THE CONVEYANCE OF MAILS TO FOREIGN COUNTRIES

INSERT NO. 525.
ORDER NO. 32394; DATED, AUGUST 8, 1946.

Effective August 15, 1946, the Postal Laws and Regulations of 1940 are amended so as to omit paragraphs 4 and 5 of Section 2240 and by changing paragraphs 2 and 3 of this Section to read as follows:

"2. Unless otherwise specially provided, payment shall be made for the transportation of United States mails and foreign closed transit mails on steamships of both United States registry and foreign registry, and for the transportation to the United States of mails which the United States is obligated to convey, at the rates of 8.8 cents a pound for mails consisting of letters and postcards and 1.1 cents a pound for mails consisting of other articles, including parcel post, for distances up to and including 300 nautical miles; 23.7 cents a pound for mails consisting of letters and postcards and 2.9 cents a pound for mails consisting of other articles, including parcel post, for distances from 300 up to and including 1,500 nautical miles, and 35.5 cents a pound

for mails consisting of letters and postcards and 4.7 cents a pound for mails consisting of other articles, including parcel post, for distances exceeding 1,500 nautical miles.

"3. As an exception to the rates specified in paragraph 2 of this section, payment for mails which the United States is obligated to convey shall be made at the rates specified in the schedule stated below in the following services:

* * * * * *

"(b) From any port in the countries signatory to the conventions of the Postal Union of the Americas and Spain (except continental United States, Canada and Spain, and Havana, Cuba, for mails forwarded from continental United States for transshipment) to any other port (except ports in continental United States, Canada, and Spain, and Havana, Cuba, for mails destined to the United States); also from ports in countries not signatory to the conventions of the Postal Union of the Americas and Spain, to any other port (except ports in continental United States, Canada, and Spain, and Havana, Cuba, for mails destined to the United States), covering regular mails originating in signatory countries.

	Letters and postcards	Other articles, including parcel post where conveyance is obligated
	Cents per pound	*Cents per pound*
Up to 300 nautical miles	6.7	1.50
From 300 to 1,500 nautical miles	11.8	2.00
Over 1,500 nautical miles	20.0	3.00

AMENDMENTS TO THE CODE OF FEDERAL REGULATIONS, TITLE 39:

Compensation for Transportation of Foreign Mails

In § 120.7 *Compensation for transportation of foreign mails* amend paragraphs (b) and (c) to read as follows:

(b) *Definite rates:* Unless otherwise specially provided, payment shall be made for the transportation of United States mails and foreign closed transit mails on steamships of United States registry and foreign registry at the rates specified in the schedule indicated below:

Distance conveyed (nautical miles)	United States mails, including parcel post, on steamships of United States registry (cents per pound—net weights)	All mails, including parcel post, on steamships of foreign registry; and foreign closed transit mails including parcel post, on steamships of United States registry (cents per pound—net weights)
Up to 300 miles	3.1	1.8
Over 300 up to 600 miles	3.1	2.5
Over 600 up to 1,000 miles	3.1	3.1
Over 1,000 up to 1,500 miles	3.6	3.6
Over 1,500 up to 2,000 miles	4.7	4.0
Over 2,000 up to 2,500 miles	4.7	4.4
Over 2,500 up to 3,000 miles	4.7	4.7
Over 3,000 up to 3,500 miles	5.0	5.0
Over 3,500 up to 4,000 miles	5.3	5.3
Over 4,000 up to 5,000 miles	5.6	5.6
Over 5,000 up to 6,000 miles	6.1	6.1
Over 6,000 up to 7,000 miles	6.5	6.5
Over 7,000 up to 8,000 miles	6.8	6.8
Over 8,000 miles	7.1	7.1

(c) *Exceptions to above rates.*—As an exception to the rates specified in paragraph (b) of this section, payment for the mails which the United States is obliged to convey shall be made at the rates specified in the schedule indicated below in the following services:

* * * * *

2. From any port in countries signatory to the conventions of the Postal Union of the Americas and Spain (except continental United States and Canada) to any other port; also from ports in countries not signatory to the conventions of the Postal Union of the Americas and Spain to any other port covering regular mails originating in signatory countries:

Distance conveyed (nautical miles)	All mails, including parcel post where conveyance is obligated (cents per pound—net weights)
Up to 300 miles	1.3
Over 300 up to 600 miles	2.0
Over 600 up to 1,000 miles	2.6
Over 1,000 up to 1,500 miles	3.1
Over 1,500 up to 2,000 miles	3.5
Over 2,000 up to 2,500 miles	3.9
Over 2,500 up to 3,000 miles	4.2
Over 3,000 up to 3,500 miles	4.5
Over 3,500 up to 4,000 miles	4.8
Over 4,000 up to 5,000 miles	5.1
Over 5,000 up to 6,000 miles	5.6
Over 6,000 up to 7,000 miles	6.0
Over 7,000 up to 8,000 miles	6.3
Over 8,000 miles	6.6

The foregoing amendment shall be effective August 1, 1954. (R.S. 161, 396, 398, as amended, 4009, as

amended, secs. 304, 309, 42 Stat. 24, 25; 5 U.S.C. 22, 369, 372, 39 U.S.C. 654.)

—PMG Order 55673, June 30, 1954 [This is insert 770 to the *Postal Laws and Regulations of 1948*, and amends sec. 120.7 pars. (b) and (c)]

13. From about January 1939, the plaintiff's ships operated between ports of the United States and the countries on the east coast of South America. There was some interruption to this service during World War II, but it was resumed in 1946, and has continued. On outbound voyages from the United States, plaintiff carried mails tendered to it by the United States Post Office. On the outbound voyages from the ports of South America, it carried mails tendered to it by the Postal Administrations of Brazil, Uruguay and Argentina. This included mails from Paraguay, interport mails and mails destined for the United States and for transit through the United States.

14. On January 3, 1945, the plaintiff instituted action in this court by filing case No. 46280. By that petition it claimed monies it regarded as due it for the carriage of mail outbound from ports of the east coast of South America on voyages of its vessels between those ports and ports of the United States. As a practical matter the facts as found by the court in that case were stipulated by the parties with the exception of the proper translation and the legal effect in Brazil of a law decree of that country.

15. In case No. 46280, the parties stipulated by counsel at a trial session that the plaintiff asked and received packet privileges for its vessels under the packet laws and regulations of Argentina, Uruguay and Brazil; and that the plaintiff's vessels received certain benefits under said laws and were obligated to perform certain burdens under said laws.

16. The entire claim as to the northbound mail from Argentina and part of the northbound mail from Uruguay was abandoned by the plaintiff in case No. 46280 pursuant to the following stipulation between counsel for the parties at a trial session:

> 6. It is agreed that acting under its laws, particularly Articles 44 and 45 of the Laws of October 19, 1923, under which vessels having packet privileges were obligated to carry mail gratuitously, Argentina specifically required

the applicant to carry its mail gratuitously under said laws. That, accordingly, no payment is due from the United States for carriage of mails tendered by the Argentine post office.

7. It is agreed that under the laws of Uruguay, particularly the Executive Resolution of July 7, 1933, all ships having packet privileges are obligated to carry the mail gratuitously; and further that said law was suspended for the war period from July 1, 1940, until November 7, 1946, by the Uruguayan Government; and accordingly that no payment is due from the United States for carriage of mails tendered by the Uruguayan post office up to July 1, 1940, but that payment is due from the United States on appropriate documentary proof of carriage in form acceptable to the United States Post Office for the period during which the Uruguayan postal packet law was suspended, i.e., from July 1, 1940, to the date of suit.

17. The parties in case No. 46280 similarly agreed that payment from the United States was due the plaintiff for the carriage by the plaintiff of mail northbound from Brazil until June 3, 1941.

18. The plaintiff's claims in the earlier case related to mail carried no later than 1942. The claim for the carriage of all mail involved in the instant case relates to that carried by the plaintiff after World War II.

19. After 1946, the plaintiff submitted claims for the carriage of mails for which it here sues. They were, on April 17, 1953, returned unpaid by covering letter of that date from the Assistant Postmaster General which reads as follows:

> Reference is made to claims submitted by your company for the conveyance of north-bound mail by your vessels from Brazil, Argentina and Uruguay since 1946.
>
> In view of the decision of the United States Court of Claims on April 3, 1951 (Case No. 46280) involving the same type of mails conveyed by your vessels prior to 1942 and in view of the fact that the Supreme Court denied your petition for certiorari on November 13, 1951, it appears that no compensation is payable by this Department for the conveyance of mails from Brazil and Uruguay or for mails conveyed from Argentina by vessels of your company which were granted special packet privileges by the Argentine government.
>
> Under the circumstances the claims as submitted cannot be certified for payment by this office and are returned herewith.

20. As of March 1, 1956, the "free transit" provisions of the Postal Convention of the Americas and Spain were no longer binding upon the United States because of a reservation this country took in the 1955 convention at Bogota, Colombia.

21. The Annual Report of the United States Postmaster General for the Fiscal Year Ending June 30, 1955, provides in part as follows:

INTERNATIONAL TRANSPORTATION

The Department will propose to the Postal Union of the Americas and Spain Congress in Bogota, Colombia, October 1955, that the free transit provision of the Convention be made optional to the member countries.

This provision now requires that each country furnish its postal transportation facilities and maritime shipping services free of charge to other member countries. As a consequence, the United States is required to pay its own steamship companies for the service they perform for the other member countries. And as the United States has by far the greater number of ships, this results in disproportionate use of our facilities and the expenditure of approximately $1,200,000 annually. The Department plans to terminate this arrangement in fiscal 1956.

22. The Annual Report of the United States Postmaster General for the Fiscal Year Ending June 30, 1956, reads in part as follows:

INTERNATIONAL SERVICE IMPROVEMENTS

Several proposals made by our representatives to the Congress of the Postal Union of the Americas and Spain, held in Bogota, Colombia, in October 1955, were adopted. These included:

1. Bulk billing of parcel post, instead of listing each parcel individually.

2. Optional increase of weight limits from 22 to 33 pounds on single packages of printed matter.

3. Elimination of the PUAS international reply coupon, in favor of the standard Universal Postal Union coupon.

Our proposal to make the free transit provisions of the Convention optional was disapproved. Therefore, the United States formulated a reservation which will reduce United States transportation costs by about $1.2

million annually. The reservation relieves the United States of responsibility for paying our steamships for transporting the mail of other PUAS countries and requires member countries to pay the Department for transporting their transit mail across United States territory.

23. On January 27, 1956, Albert F. Chrystal, Vice President of the plaintiff, wrote the Assistant Postmaster General in part as follows:

RE: REQUEST FOR DESIGNATION AS A "THIRD SERVICE"

Moore-McCormack Lines, Inc. hereby makes application for its designation as a "Third Service" within the meaning of the Convention of the Universal Postal Union.

This request is considered to be necessary due to the termination on March 1, 1956, of the participation by the United States in the "free transit" provision of the Convention of the Postal Union of the Americas and Spain.

Pursuant to such "free transit" provisions our Moore-McCormack vessels have performed certain services for South American postal administrations gratis for almost twenty years and such foreign postal administrations have become accustomed to the receipt of such services gratis and have not been accustomed to dealing directly with us. On the other hand, they have been long accustomed to having regarded us as an instrumentality of our government and the formal designation of us as a "Third Service" seemingly would be both consistent and appropriate.

The experience of this company confirms our belief that the only way it can effect collection for its services is through being considered a "Third Service" by the United States Post Office Department. *Our representatives in Uruguay have been advised that the local postal administration under local laws will not pay us for any postal transportation. In Argentina no payment for postal transportation can be expected because of a local postal packet privilege law and, in addition, we were never paid for parcel post accounts although such were not disputed to be due us. Brazil, however, pays us for parcel post carriages but the rate is quite low. It is not known what the attitude of the Postal Administration of Brazil will be as to payment for the carriage of U.P.U. Convention mails.* [Emphasis added].

24. On March 5, 1956, the letter quoted above was answered by the Assistant Postmaster General in part as follows:

> I have given careful consideration to your request of January 27, 1956, that the vessels of Moore-McCormack Lines, Inc. be declared as "Third Services" by the Post Office Department.
>
> * * * * *
>
> From conversations with representatives of the other steamship companies serving other member countries of the Postal Union of the Americas and Spain, we understand that they are going ahead with arrangements to make every effort to collect from the dispatching countries for the transportation of their mails. On the other hand it appears that your company has assumed that the Latin American countries you serve will not compensate you under the changed procedure and hence have asked to be declared a "third service". Perhaps, based on your experience, this assumption is correct but it seems to me that now is the time for your company to make a real effort to collect from these countries for the services rendered.
>
> If after a reasonable time it is apparent that you will not be successful, the Department is willing to give you such assistance as it may be able to render in liquidating the obligations owing you by the dispatching countries.

25. On September 24, 1958, the plaintiff again wrote to the Assistant Postmaster General in pertinent part:

> You will recall that at the time the United States took a reservation to the provision concerning "free and gratuitous transit" of the Convention of the Postal Union of the Americas and Spain, Moore-McCormack Lines expressed its deep concern that it might encounter difficulty acting alone in collecting for the transportation of the mails of Brazil, Argentina and Uruguay.
>
> * * * * *
>
> The Department of State, at the request of this company has made a test case of the mail transportation services performed for Brazil by flag vessels of the U.S. registry. It can advise you of the status of its efforts. In addition to seeking the aid of the Department of State representatives of the company both before March 1, 1956, and since have frequently called upon high postal officials of Argentina, Brazil and Uruguay and have advised these officials that in the absence of ad-

herence by the United States to the "free and gratuitous transit" provision of the Postal Union of the Americas and Spain that the company must and would expect payment by their respective administrations for the service performed for them. Statements of services performed and amounts due, based on rates currently in use, have been presented to each administration. Only one postal administration, Argentina, has categorically refused to pay for the services performed and documents attesting to this fact are enclosed. This company has pressed and continues to press the postal administrations of Uruguay and Brazil for answers. Based upon experience and the advice of local management and local counsel, this company is convinced it is hopeless to pursue this course.

The spirit of the final paragraph of your letter quoted above [see Finding 24] is greatly appreciated. For over two and a half years this company had made a real effort to collect and has failed; we believe that you will agree that after a reasonable time it has become apparent that we will not be successful in our present course. Therefore your assistance is most urgently required and requested.

* * * * * *

26. The reply to the above-quoted letter was sent on November 6, 1958, and reads as follows:

A reply to your letter of September 24 has been held in abeyance pending study and an opinion by our General Counsel.

It has been pointed out that the local laws of Argentina, Brazil, and Uruguay require gratuitous transportation of mail in return for your company enjoying postal packet privileges. Hence, in a sense you have a contract with those countries which does not brook interference by this Department.

There is a possibility that if we declared Moore-McCormack a third service the three countries involved would take some action against you, either in the form of revoking the postal packet privileges or even something more drastic. That, in turn, could lead to complications.

Another complication is that to designate Moore-McCormack now a third service would be in conflict with the Post Office Department's position in cases pending in the Court of Claims.

You mention that the Department assists American flag air carriers to obtain payment from foreign coun-

tries and consequently feel that this justifies doing likewise with steamship lines.

However, there is a difference. None of the South American countries involved requires air carriers to transport air mail free of charge, either as a condition of entry or in return for special privileges as they do in the instance of steamship lines. Thus, those countries appear to be under legal obligation to make payment to the air carriers and any assistance we render is to collect a just debt and not to enable the airlines to evade a legal obligation they owe to such foreign countries.

My letter of March 5, 1956 stated that the Department is willing to give you such assistance as it may be able to render. However, when viewed in the light of the circumstances set forth above, I believe you will agree there is nothing more we can do.

Believe me, I am extremely sorry to find it necessary to answer you in this vein.

27. There is in evidence as defendant's exhibit 11 a pamphlet in the Spanish language entitled "DIGESTO MARITIMO Y FLUVIAL". According to the witness, Mr. Bosch, counsel for the Consulate General of Argentina in New York, by whom it was identified, it was an official document issued by the Maritime National Perfecture, an agency of the executive department of the Argentine Government.

Article 421 of the "Digesto Maritimo Y Fluvial", as translated into English, reads in part as follows:

> All foreign ships with postal packet privilege shall be subject to the following obligations: (A) to carry gratuitously the mail and postal matter delivered to them by the general post office and telegraph for their ports in their itinerary or for the ports which they shall come to in transit.

28. Postal packet privileges were in fact granted to several of the plaintiff's vessels which were effective during the period for which claim is made herein.

29. In early 1957, pursuant to formal request made by the plaintiff, the General Director of the Ministry of Communications of Argentina issued the following certificate to which the seal of the Ministry was affixed, the translation from Spanish of which reads as follows:

ARGENTINE REPUBLIC
MINISTRY OF COMMUNICATIONS.
SEAL OF THE MINISTRY OF COMMUNICATIONS, GENERAL ADMINISTRATION.

File N° 799/MC/57.

The Ministry of Communications of the Nation hereby certifies that all the vessels of "Moore-McCormack Lines, Inc." which transported the mail gratuitou .y out of our country from 1948 through the period ending February 29th, 1956 did so in full compliance with the obligations arising from the Conventions of the Postal Union of the Americas and Spain of Rio de Janeiro (1946) and Madrid (1950), without the necessity of applying the regulations concerning Postal Packet Privileges.

It is hereby stated that the Attorney General (Procuración del Tesoro de la Nación) has isued his favorable opinion in order that the present certificate be extended in the above-mentioned terms.

Given, signed and sealed in the City of Buenos Aires, Federal Capital of the Argentine Republic, on the 21st day of the month of February of the year 1957.

30. On November 7, 1946 an executive decree, No. 8011, was issued by the President of the Republic of Uruguay which promulgated regulations for the concession of Packet Privileges. No translation from the Spanish is in evidence, though the text in Spanish is a part of defendant's exhibit 3, in evidence.

31. On January 3, 1952, the President of the Republic of Uruguay issued decree No. 20730, the translation from the Spanish of which reads in part as follows:

REGULATIONS FOR THE CONCESSION OF A PATENT OF PACKET PRIVILEGES.—

DECREE N° 20730. 3RD. JANUARY 1952.

Ministry of National Defense—Ministry of Foreign Affairs—Ministry of Finance—Ministry of Industry and Labour—Ministry of Public Health.—

Montevideo, 3rd January 1952.

Pursuant to the antecedents, by which the Commission appointed by Decree N° 19194 of 28th August 1951, to rev the Regulations for Packet Privileges approved by Decree N° 8011 of 7th November 1946, submits for the consideration of the higher authorities a draft of

proposed Regulations to substitute those at present in force;

Whereas the draft of Regulations for the concession of a Patent of Packet Privileges, now submitted for consideration, has been composed by a Commission comprising representatives of all the organizations interested in its application, taking as a base for same the general framework of the previous Regulations, having rectified the deficiencies and inconveniences which its subsequent application made evident, and endeavoring at the same time to compile a more rational and precise text:

The President of the Republic Decrees:

Art. 1°.–That the Regulations for the Concession of Patents of Packet Privileges be approved as worded in administrative documents Series * * *, in substitution of the actual Regulations for Packet Privileges approved by Decree N° 8011 of 7th November 1946.–

* * * * * *

REGULATIONS FOR THE CONCESSIONS OF A PATENT OF PACKET PRIVILEGES

ART. 1.—Packet Privileges signify the special advantages or prerogatives conceded to national and foreign vessels in accordance with the categories specified in these Regulations. These Privileges shall be conceded by Government Authority, which reserves the right to reject or cancel same if necessary even in circumstances where all the required conditions have been complied with regarding the vessels for which same were solicited.–

* * * * * *

OBLIGATIONS OF VESSELS HOLDING PACKET PRIVILEGES.

National or Foreign Vessels of Category 'A'

ART. 11.—All National or Foreign vessels holding Packet Privileges of Category 'A', or whose Petition for same is under consideration, or as the case may be, their Agents, are subject to the following obligations:

a) To carry free of charge all Mails and Parcel Post packages delivered to them by the General Postal Authorities for the ports of their itinerary or ports of call in transit.– It is understood that this obligation applies exclusively to Mails and Parcel Post from or for ports of the Republic.

* * * * * *

National or Foreign Vessels of Category 'B'

ART. 12.—National or Foreign vessels holding Patents of Packet Privileges of Category 'B', or whose Patents are in process of being isued, or as the case may be, their Agents, are required to comply with the provisions stipulated in clauses a), b), c), d), e), f), h), i), j), and k), of Article 11 of these Regulations.

National or Foreign Vessels of Category 'C'

ART. 13.—National or Foreign Vessels holding Patents of Packet Privileges of Category 'C', or whose Patents are in process of being issued, or as the case may be, their Agents, are subject to the following obligations:

a) To carry free of charge, whenever necessary, Mails and Parcels Post packages as established for National or Foreign vessels of Category 'B'.– The General Postal Authorities will utilize the services of these ships for the carriage of Mails and Parcels Post packages when vessels, holding Packet Privileges of the other Categories plying these routes, are not available.–

* * * * * * *

32. The plaintiffs did request and receive packet privileges for several of its ships.

33. On December 4, 1958, a certificate was issued at the request of the plaintiff and with the consent of the Ministry of Industry and Labor of Uruguay by the General Secretary thereof. A translation from the Spanish is as follows:

BN 2097979

TRADUCCION N° 10.511/58.

GENERAL POST OFFICE DIRECTION. File N. 103/57–12/4/58. SGS. I CERTIFY: That the free carriage of mail on [redacted] steamers of Moore-McCormack Lines, Inc., of the United States of America over the period 1948–1956 was made in compliance with the Convention of the Postal Union of the Americas and Spain (Union Postal de las Americas y Espana). And, upon the request of the interested concern, and with the corresponding consent of the Ministry of Industry and Labor (File Nr. 103/57) dated 12/4/58, this Certificate is issued in Montevideo the twentyseventh day of June of the year Nineteenhundred and fifty eight. Sgd. ZULEMA JARDON. General Secretary. Visaed. Sgd. Colonel RUBEN M. MACCHI. Post-Office Comptroller.

Seal of the General Post-Office Direction. The document is issued on a Post-Office sheet of paper Nr. Bl—138675.

THE ABOVE IS—TO THE BEST OF MY KNOWLEDGE AND BELIEF A TRUE TRANSLATION OF THE SPANISH CERTIFICATE AND A COPY HEREOF IS KEPT ON FILE UNDER NR. 10,511/58. ISSUED IN MONTEVIDEO THIS TWENTIETH DAY OF JULY NINETEENHUNDRED AND FIFTYEIGHT, UNDER MY HAND AND SEAL.

(S) SUSANA BERRO GALLEGOS
PUBLIC TRANSLATOR.

34. In 1946 the plaintiff's vessels resumed the service to Brazil which had been interrupted by World War II. These ships carried mail southward from the United States to Brazil, and on the northbound voyages carried mail tendered by the Postal Authorities of Brazil.

35. On September 18, 1946, Brazil adopted and promulgated a new constitution. Article 141, as translated from the Portuguese, provides in part as follows:

* * * * *

Paragraph 16. The right of property is guaranteed, except in the case of expropriation for public necessity or utility, or in the social interest, preceded by just compensation in cash. In the event of imminent danger, such as war or internal commotion, the proper authorities may use private property, if this shall be required for the public good, the right to subsequent compensation being, however, assured.

* * * * *

36. In October 1913, Decree No. 10,524 was issued which regulated the issuance of packet privileges and imposed certain obligations upon those ships to which packet privileges were issued. This decree provided in part, as translated from the Portuguese, as follows:

ART. 159. In order to have the right to these privileges, the enterprises, companies or owners of the ships must prove that the same are registered, in accordance with this regulation and that they have been surveyed at the proper time, also meeting or undertaking to meet all specially stipulated conditions demanded by the Ministry of Transport and Public Works, under terms or contracts made with the said Ministry, besides accepting the following obligations:

* * * * *

b)—to transport free of charge on their ships the mail bags, bringing them from shore to ship, or "vice-versa", or to deliver them to the Agents of that Department duly authorized to receive them, the delivery or reception being made against receipt:

* * * * * *

Further this decree granted concessions to ships issued packet privileges in the following terms, as translated:

* * * * * *

CHAPTER XIX

Concession of packet boat privileges and of any other special favors or subventions and fiscalization of same.

ART. 157.—Passenger ships or only cargo vessels plying on regular shipping lines between ports of more than one State, will enjoy, as packet-boats, the following privileges, granted by the Ministry of Transport and Public Works:—

1st.—The faculty of sailing at any hour of the day or night, once the ruling of this regulations are complied with;

2nd.—The faculty of being allowed to discharge immediately, independent of Customs' permission and the presence of the respective guards;

3rd.—The exemption from Light-house taxes;

4th.—The exemption from contributing to houses of charity at all ports of the Republic;

5th.—Using a passport while awaiting change of the certificate of register, and if there is space for annotations;

6th.—Free passes or sailing dispatches for packets; only subject to maximum Federal stamps of 1$000, [sic] and which will continue to be given by Customs, Police, Post-Office and Captain of the Port;

7th.—Concession of a 50% rebate on the docking charges, mooring to quay side, loading or discharging, to which foreign ships are subject to, duly respecting contracts in force on the date that this regulation is promulgated;

8th.—Dispenses from paying in ports, double expenses of loading, discharging and stevedoring of goods on Sundays and Holidays, when by reason of a schedule approved by the Government, the vessels are obliged to call at or remain in ports on those days, contracts in force on the date of promulgation of this regulation being duly respected.

* * * * * *

37. On June 3, 1941, at a time when the Executive in Brazil had taken over the legislative function of the Congress, decree law No. 3,326 was issued by President Vargas. The English translation of this decree law provides in part as follows:

ARTICLE 1. Transportation of articles of correspondence and of postal despatches shall be made:

* * * * * *

II. On fluvial, maritime and lacustrine routes:

(a) In Brazilian vessels of any description;

(b) In steamships or packets belonging to foreign carriers, whether subsidized or not, sailing regularly between ports of Brazil and those of foreign countries.

* * * * * *

ARTICLE 2. It shall be obligatory for *all* fluvial, lacustrine and maritime carriers or companies of navigation and for Federal, State or Municipal railroads, to transport postal despatches and articles of correspondence gratuitously, without limitation on weight or volume.

SECTION 1. The transportation shall also be obligatory and gratuitous on railroads, navigation or public highway companies or carriers enjoying especial treatment, benefits or favors from the Union, the States and Municipalities.

SECTION 2. In case of vessels the net tonnage of which is equal to, or less than ten tons, the weight of despatches to be transported shall not exceed 4% of such capacity.

38. On April 14, 1943, at a time when the powers of the Congress were being exercised by the Executive, President Vargas issued decree law No. 5406, which modified light dues (sometimes called lighthouse dues), and the granting of packet privileges. A translation of this decree reads in part as follows:

The President of the Republic, exercising the powers vested in him under Article 180 of the Constitution, decrees:—

ART. 1. Foreign vessels calling at Brazilian ports, proceeding from foreign or Brazilian ports, with cargo or in ballast, carrying passengers or not, whether cleared for the port or putting in in distress, are obliged to pay light dues amounting to two thousand cruzeiros (Cr$ 2,000.00).

Sole Paragraph. This tax shall be payable as many times as such vessels enter any Brazilian port, not only on an outward but also on a return voyage.

Art. 2. Mail boats, universally recognized as such, i.e., those which carry passengers, mails and cargo, and steamers of regular lines, which enjoy the privileges of the former shall only pay the tax referred to, in the first two ports of call, both on the outward and return voyages. A certificate of this payment must be applied for, and will serve as proof in the other ports.

* * * * *

Art. 5. Steamers on regular lines, in order to enjoy packet privileges must be recognized as such by the Directorate General of the National Exchequer, on an application reported on by the Directorate of Customs Revenue and accompanied by:—

a) a certificate from the respective Custom House, testifying that the line is a regular one;

b) an authentic document giving the cargo capacity of the vessel, for which purpose the certificate of registry, passport, or Lloyd's register certificate may be presented.

Paragraph 1. The application having been reported on, it shall be submitted to the Director General, who, after examining the dossier, shall order the certificate (carta declaratoria) to be issued, on which stamps shall be paid at the Receiving Office of the Federal District or at the Custom Houses in the States, to twice the amount of No. 31 of the table accompanying Decree-Law No. 4,655 of 3rd September 1942.

Paragraph 2. The grant of packet privileges entails the fulfillment of the obligations laid down in Chapter XIX of Decree No. 10,524 of 23rd October 1913, Decree No. 16,300 of 31st December 1923, and Art. 54 of Law No. 4,984 of 31st December 1925.

* * * * *

39. In June 1951 an Executive decree of January 17, 1951 was issued. Chapter VI of this decree contains essentially a rewrite of the 1941 decree law quoted in finding 37.

40. The Annual Report of the United States Postmaster General for the Fiscal Year Ending June 30, 1955, provides in part as follows:

INTERNATIONAL TRANSPORTATION

The Department will propose to the Postal Union of the Americas and Spain Congress in Bogota, Colombia, October 1955, that the free transit provision of the Convention be made optional to the member countries.

This provision now requires that each country furnish its postal transportation facilities and maritime shipping services free of charge to other member countries. As a consequence, the United States is required to pay its own steamship companies for the service they perform for the other member countries. And as the United States has by far the greater number of ships, this results in disproportionate use of our facilities and the expenditure of approximately $1,200,000 annually. The Department plans to terminate this arrangement in fiscal 1956.

41. Prior to August 1, 1954, the Post Office Department required steamship companies to transport all incoming mails from the ship to the post office. The plaintiff, during the times material herein, December 1951 through August 1, 1954, did so transport mail from ship to post office. The cost to the plaintiff for this trucking service was $8,858.61.

42. Section 405.(a) of the Merchant Marine Act of 1936 (74 Stat. 1985, 1995) provides as follows:

* * * * *

All mails of the United States carried on vessels between ports between which it is lawful under the navigation laws for a vessel not documented under the laws of the United States to carry merchandise shall, insofar as practicable, be carried on vessels of United States registry.

* * * * *

43. The Annual Report of the United States Postmaster General for the Fiscal Year Ending June 30, 1923, provides in part as follows:

FOREIGN MAIL SERVICE

The Foreign Mail Service covers all the relations between the United States and foreign countries in the exchange of mails between them.

Every opportunity for the safe and expeditious dispatch of mails to foreign countries is employed. In the assigning of mails for dispatch abroad vessels of American registry are employed in preference to vessels of foreign registry. This preference is limited to 24 hours for American vessels over a competing foreign vessel in the anticipated time of arrival in the port of destination. When the American vessel has sea-post service the preference is extended to 48 hours, because the distribution of mails on board tends to equalize the difference in time of arrival.

44. The Post Office Department accorded a preference to United States flag vessels as expressed in the Postmaster General's report from at least 1923. The 24-hour preference was extended to 48 hours at some point between 1923 and 1953.

45. Beginning about February 1953, and ending at the end of February 1956, the Post Office Department withdrew this preference to United States flag vessels over vessels flying the flags of countries signatory to the Convention of the Postal Union of the Americas and Spain, and sent a substantial quantity of mail by foreign ships which the plaintiff's were ready, able and willing to carry.

46. On February 21, 1956, the Director, International Service, United States Post Office, Bureau of Transportation, wrote to the Postmasters at New York and New Orleans, in part, as follows:

> Effective March 1, 1956, the "free transit" provisions of the Convention of the Postal Union of the Americas and Spain will no longer be operative insofar as the United States is concerned. Hence certain changes are necessary in the submission of the above-named reports on and after that date.
>
> * * * * *
>
> Unless you are advised to the contrary prior to March 1, 1956, on and after that date ships of United States registry serving ports in countries that are members of the Postal Union of the Americas and Spain will be accorded the same preference as other United States flag ships; i.e., 2 days for letters and preferential prints and 7 days for non-preferential prints and parcel post. (This supersedes our letters of March 30, 1953 and December 22, 1954).

47. The Post Office Department made no payment to anyone for the carriage of mails, which plaintiff claims its vessels were entitled to carry, where such mails were transported by Postal Union of the Americas and Spain vessels.

CONCLUSION OF LAW

Upon the foregoing findings of fact, which are made a part of the judgment herein, the court concludes as a matter of law that the plaintiff is not entitled to recover and, therefore, the petition is dismissed.

U.S. GOVERNMENT PRINTING OFFICE: 1962

In the United States Court of Claims

No. 572-57

(Filed MAY 11 1961)

MOORE-McCORMACK LINES, INC. v. THE UNITED STATES

REPORT OF COMMISSIONER

To the honorable the CHIEF JUDGE AND ASSOCIATE JUDGES OF THE UNITED STATES COURT OF CLAIMS:

Pursuant to the order of reference in the above-entitled case, the undersigned commissioner herewith makes the following report of his findings of fact:

1. At all times material herein plaintiff was, and is, a corporation organized and existing under the laws of the State of Delaware. Plaintiff is the same corporation as was plaintiff in *Moore-McCormack Lines, Inc.* v. *U.S.*, Ct. Cl. No. 46280, reported in 119 Ct. Cl. 473.

2. At all times material herein plaintiff, beginning in 1946, was engaged in the transportation, by ships registered under the flag of the United States, of passengers, cargo and mail on a trade route between various United States Atlantic ports, particularly New York, and ports on the east coast of South America, more particularly Montevideo, Buenos Aires, Santos, Rio de Janeiro, Bahia, and Belem among others.

3. Beginning in the year 1946 and continuing through February 29, 1956, plaintiff was tendered by the Post Office Department and carried United States mails southbound to the ports of Rio de Janeiro, Brazil; Buenos Aires, Argentina; and Montevideo, Uruguay; from the port of New York on vessels documented under the laws and carrying the flag of the United States, and was paid for the carriage, all pursuant to the postal laws and regulations.

4. Plaintiff commenced the service described in the foregoing findings 2 and 3 in the year 1939 and continued it through part of 1942 until its vessels were requisitioned by the United States during World War II. Plaintiff's vessels resumed the suspended service in the year 1946 and has continued it to the present time.

5. In accordance with 5 U.S.C. § 372, the Postmaster General of the United States negotiated and concluded with the governments of Panama, Colombia, Venezuela, Ecuador, Bolivia, Peru, Chile, Brazil, Uruguay, Argentina, Paraguay and other governments, postal conventions known as the Pan American Postal Union, First Congress, Buenos Aires, 1921, and Second Congress, Mexico, 1926, and Postal Union of the Americas and Spain, Third Congress, Madrid, 1931, Fourth Congress, Panama, 1936, Fifth Congress, Rio de Janeiro, 1946, and Sixth Congress, Madrid, 1950. The ports of Brazil, Uruguay and Argentina are served by plaintiff; Paraguay, which has river ports only, is served by the plaintiff through the port of Buenos Aires, Argentina.

6. The Postal Convention between the Americas and Spain, the final protocol and the regulations of execution thereof, signed at Madrid on November 10, 1931, and approved by the President on February 9, 1932, 47 Stat. 1925, provide in part as follows:

CONVENTION

* * * * *

ARTICLE 3

Free and gratuitous transit

1. The gratuity of territorial, fluvial and maritime transit is absolute in the territory of the Postal Union of the Americas and Spain; consequently, *the countries* which form it *obligate themselves* to transport across their territories and *to convey by the ships of their registry or flag* which they utilize for the transportation of their own correspondence, without any charge whatsoever to the contracting countries, all that which the latter may send to any destination. [Italics supplied.]

2. In cases of reforwarding, the contracting countries are bound to reforward the correspondence by the ways and means which they utilize for their own dispatches.

* * * * *

FINAL PROTOCOL OF THE CONVENTION (47 STAT. 1940)

* * * * * * *

IV

1. If, at the time when the Convention enters into force, a country cannot concede gratuity of transit because stipulations of existing contracts concluded previously are opposed to it, that country obligates itself to modify such contracts so as to make said gratuity effective as soon as possible. All contracts which are renewed or those which may be concluded in the future shall assure complete gratuity of transit for correspondence transported in ships which are affected by said contracts, between the various ports of the Americo-Spanish postal territory, as well as between the latter and those of countries foreign to the Union.

In spite of the existence of those contracts which impede the application of the principle of gratuity of transit, no Postal Administration may present accounts for maritime transit charges relative to the transportation of correspondence affected by the aforesaid contracts.

2. Each of the contracting countries obligates itself to maintain the privileges which the ships of the other countries of the Postal Union of the Americas and Spain transporting correspondence gratuitously are at present enjoying, as well as to concede to them in the future all the privileges which they extend to ships of any other country that perform said service.

* * * * * * *

REGULATIONS OF EXECUTION OF THE CONVENTION OF THE POSTAL UNION OF THE AMERICAS AND SPAIN (47 STAT. 1942)

* * * * * * *

ARTICLE 7

Transit statistics

As a result of the gratuity of transit referred to by Article 3 of the Convention, the Administrations of the contracting countries will not perform any transit cost statistical operations in connection with dispatches containing Americo-Spanish correspondence exclusively, whenever this correspondence is forwarded without the intervention of countries or services foreign to the Postal Union of the Americas and Spain.

* * * * * * *

ARTICLE 14

Application of the Universal Postal Convention and domestic legislation

1. All matters in connection with the exchange of correspondence among the contracting countries which are not provided for in these Regulations will be subject to the stipulations of the Regulations of the Convention of the Universal Postal Union in force.

2. Likewise, the domestic legislation of the same countries will be applicable in everything that has not been determined by either set of Regulations.

* * * * * *

7. The Postal Union of the Americas and Spain Convention and final protocol and regulations of execution signed at Panama, December 22, 1936; ratified by the Postmaster General, August 12, 1937; and approved by the President, August 20, 1937 (50 Stat. 1667), provide in part as follows:

CONVENTION

* * * * * *

ARTICLE 3

Free and gratuitous transit (same as Article 3 in finding 6.)

* * * * * *

ARTICLE 27

Application of Universal Postal Convention and domestic legislation

1. All matters in connection with the exchange of correspondence among the contracting countries which are not provided for in this Convention will be subject to the stipulations of the Universal Postal Convention in force and its Regulations; and, in turn, that which is not covered by these last two will form the subject of special agreements between the Administrations concerned.

2. Likewise, the domestic legislation of the said countries will apply to everything which has not been provided for in either Convention.

* * * * * *

REGULATIONS OF EXECUTION OF THE CONVENTION OF THE POSTAL UNION OF THE AMERICAS AND SPAIN (50 STAT. 1683)

* * * * * *

ARTICLE 108.

Transit statistics

As a result of the gratuity of transit referred to by Article 3 of the Convention, the Administrations of the contracting countries will not perform any transit statistical operations in connection with dispatches containing Americo-Spanish correspondence exclusively, whenever this correspondence is forwarded without the intervention of countries or services foreign to the Postal Union of the Americas and Spain.

* * * * * *

ARTICLE 116

Application of Universal Postal Convention and domestic legislation

1. All matters in connection with the exchange of correspondence among the contracting countries which are not provided for in these Regulations will be subject to the stipulations of the Regulations of the Convention of the Universal Postal Union in force.

2. Likewise, the domestic legislation of the same countries will be applicable in everything that has not been determined by either set of Regulations.

* * * * * *

FINAL PROTOCOL OF THE CONVENTION (50 STAT. 1679)

* * * * * *

III

Each of the contracting countries undertakes to maintain the privileges enjoyed at present by ships of other countries of the Postal Union of the Americas and Spain which transport mails free of charge, as well as to grant them in the future all privileges which it grants to ships of any other country which perform such service.

* * * * * *

8. Resolutions of the Congress (The Fourth Americo-Spanish Postal Congress) 50 Stat. 1691, provide in part as follows:

* * * * *

IV

That they try to obtain from steamship companies of countries foreign to the Postal Union of the Americas and Spain which transport their correspondence a reduction in the present rates, and their agreement in no case to collect a sum per weight-unit greater than that which they collect from the country of origin, except in cases where, due to packet or other privileges, said companies are obligated to perform gratuitous transportation.

* * * * *

9. The Postal Union of the Americas and Spain Convention and final protocol and regulations of execution thereof, signed at Rio de Janeiro, September 25, 1946, ratified by the Postmaster General, February 20, 1947, and approved by the President, February 27, 1947, 61 Stat. 3505, provide in part as follows:

CONVENTION

* * * * *

ARTICLE 3

Free and gratuitous transit.
(Same as Article 3 in finding 6.)

* * * * *

ARTICLE 26

Application of the Universal Postal Convention and domestic legislation

1. All matters in connection with the exchange of correspondence among the contracting countries which are not provided for in this Convention, will be subject to the stipulations of the Universal Postal Convention and its Regulations. In turn, those which are not covered by these last two will form the subject of special agreements between the Administrations concerned.

2. Likewise, the domestic legislation of the said countries will apply to everything which has not been provided for in either Convention.

* * * * *

REGULATIONS OF EXECUTION OF THE CONVENTION OF THE POSTAL UNION OF THE AMERICAS AND SPAIN

ARTICLE 107

Transit statistics

As a result of the gratuity of transit referred to by Article 3 of the Convention, the Administrations of the contracting countries will not perform any transit statistical operations in connection with dispatches containing America-Spanish correspondence exclusively, whenever this correspondence is forwarded without the intervention of countries or services foreign to the Postal Union of the Americas and Spain.

ARTICLE 113

Application of Universal Postal Convention and domestic legislation

For all matters not provided for by these Regulations regarding the exchange of correspondence among the contracting countries, the provisions of the Regulations of the Convention of the Universal Postal Union will be applicable, and, in the absence of these, the domestic legislation of the same countries.

10. The Postal Union of the Americas and Spain Convention, Final Protocol and regulations of execution thereof (T.I.A.S. 2286) signed at Madrid, November 9, 1950; ratified and approved by the Postmaster General, June 7, 1951; and approved by the President, June 22, 1951, provided in part as follows:

CONVENTION

ARTICLE 3

Free and gratuitous transit

1. The gratuity of territorial, fluvial and maritime transit is absolute in the territory of the Postal Union of the Americas and Spain; consequently the countries which form it obligate themselves to transport across their territories and to convey by ships of their registry

or flag, without any charge to the contracting countries, all the correspondence which the latter may send to any destination whatsoever. However, this gratuity of transit will not be applied to the subsequent maritime transmissions of correspondence destined for a third country which is not a member of the Postal Union of the Americas and Spain in cases where a reshipment or transfer may be necessary, or justified expenses of handling may arise.

2. Likewise, when services of foreign Administrations are required for the subsequent conveyance of the closed mails, collection can be made from the Administrations of origin of the same amounts which the intermediary Administrations may be compelled to pay therefor.

3. In cases of onward dispatch, the contracting countries bind themselves to forward the correspondence by the most rapid ways and means which they utilize for their own mails.

* * * * *

REGULATIONS OF EXECUTION OF THE CONVENTION OF THE POSTAL UNION OF THE AMERICAS AND SPAIN

* * * * *

ARTICLE 121

Application of the Universal Postal Convention and of domestic legislation

In all matters not provided for by these Regulations relative to the exchange of correspondence among the contracting countries, the provisions of the Regulations of the Convention of the Universal Postal Union will apply, and, in their absence, the domestic legislation of those countries.

* * * * *

11. Appendix II to the brief of the United States filed in this court on June 30, 1942, in *United Fruit Company* v. *U.S.*, No. 44232, relates to interpretations of Article 3 of the Madrid Convention and reads in part, as follows:

APPENDIX II

Interpretations of Article 3 of the Conventions by The United States

Under Authority of U.S.C., Title 5, Section 372, which reads:

For the purpose of making better postal arrangements with foreign countries, or to counteract their adverse measures affecting our postal intercourse with them, the Postmaster General, by and with the advice and consent of the President, may negotiate and conclude postal treaties or conventions, and may reduce or increase the rates of postage or other charges on mail matter conveyed between the United States and foreign countries: *Provided*, That the decisions of the Postmaster General construing or interpreting the provisions of any treaty or convention which has been or may be negotiated and concluded shall, if approved by the President, be final and conclusive upon all officers of the United States. There have been two official interpretations of Article 3 of the Convention. No. 1 interpretation of Article 3 (approved by the President May 19, 1936) reads as follows:

is interpreted and construed to mean that gratuity of maritime transit does not depend on whether territorial transit is or is not also furnished for the same mails; on the other hand, gratuity of territorial (or fluvial) transit does not depend on whether maritime transit is or is not also furnished for the same mails.

The context of Section 1 above quoted clearly indicates that "and" (underlined) is used disjunctively for "or" and not conjunctively. In other words "and" (underlined) is not used to connect "the countries * * * obligate themselves to transport across their territories" and "to convey by the ships of their registry or flag which they utilize for the transportation of their own correspondence, without any charge * * " so as to provide that gratuity of maritime transit is contingent on the mails involved being also transported over the territory of the country whose flag is flown by the ships performing the maritime transit and that in connection with such territorial transit gratuity of territorial transit in addition to gratuity of maritime transit must be granted by the same Postal Administration to the same mails, or else no gratuity of maritime transit (or territorial transit) is granted.

The context of the said Section 1 clearly shows that the gratuity of transit granted thereby to maritime, territorial and fluvial transit is without any qualification that such gratuity of transit depends on maritime and territorial (and fluvial) transit being furnished for the same mails; this is clearly indicated by the statement in the first phrase of the section, that is, "The gratu-

ity of territorial, fluvial and maritime transit is absolute * * *"

No. 2 Interpretation (approved by the President November 17, 1936) reads:

is further interpreted and construed to mean that, having ratified the aforesaid Convention after express instruction to its delegates to the Third (Madrid, 1931) Pan American Postal Congress to concede complete gratuity of transit by ships of American registry to mails of countries of the Pan American Postal Union (name changed to "Postal Union of the Americas and Spain" by the said Madrid, 1931, Congress), as hereinafter set forth (i.e., in translation, from the Documents of the Third Pan American Postal Congress, Madrid, 1931, Minutes of the Seventh Session of the First Committee), the United States of America thus accepted the interpretation of the rest of the delegations to that Congress and obligated itself to transport free of cost to the country of origin all the mails consisting of articles of correspondence (letters, post cards, prints, commercial papers, samples without value, and small packets) of other Americo-Spanish countries adhering to the Convention in question (for any destination) by steamships of American registry utilized by the United States for the transportation of its own correspondence, regardless of whether or not the conveying steamships of American registry are then under contract to carry mails of the United States of America and whether or not the foreign mails in question are embarked on such American steamships at a foreign or a United States port and whether or not such mails ever reach a port of the United States or any United States Federal postal agency en route to their destinations.

This interpretation has due regard to the memorandum relative to gratuity of transit which was signed (on their return from Madrid) by the delegates of the United States to the aforesaid Madrid, 1931, Congress, that is, by Mr. W. Irving Glover, then Second Assistant Postmaster General, and Mr. Eugene R. White, then Director of International Postal Service. The memorandum mentioned reads as follows:

"After an extended and thorough consideration and discussion of the free transit provisions (Article 3 of the Convention of the Americas and Spain) the Delegates of the Madrid Congress were in unanimous agreement that all the transportation facilities used by any one postal administration wherever they may reach on land or water are placed freely at the disposition of the ad-

ministrations of the other signatory countries without charge, except where payment has to be made by the intermediary country for the use of vessels foreign to its flag."

12. The Universal Postal Union, Convention of Stockholm, 1924, provides:

* * * * * *

ARTICLE 70

Transit Charges

1. Correspondence exchanged in closed mails between two Administrations of the Union, by means of the services of one or several other Administrations (third services), is subject to the payment to each of the countries traversed or whose services participate in the conveyance, of the transit charges indicated in the following table: (table omitted).

4. Barring contrary agreement, maritime conveyances effected directly, between two countries, by means of ships belonging to one of them, as well as conveyances effected between two offices of the same country through the intermediary of services belonging to another country, are considered as third services.

* * * * * *

The same provisions were continued in succeeding conventions to date. Under these Conventions of the Universal Postal Union, the United States Post Office Department could have billed either for collection or for offset the Postal Administration of Brazil, Uruguay, Argentina, and Paraguay for the services of the vessels of the plaintiff had not this right been voluntarily nullified and relinquished by the action of the United States in becoming a signatory of the Postal Union of the Americas and Spain providing for "free and gratuitous transit."

13. Pertinent provisions of orders of the Postmaster General as to payment for carriage of mail are quoted below:

OFFICE OF THE POSTMASTER GENERAL.
Washington, May 12, 1937.

AMENDMENT TO THE POSTAL LAWS AND REGULATIONS

Order No. 10387.

Paragraph 2, Section 2242 of the Postal Laws and Regulations, is amended to read as follows, effective July 1, 1937:

"2. Unless otherwise specifically provided, payment shall be made for the transportation of United States mails and foreign closed transit mails on steamships of both United States registry and foreign registry at the rates of 5.25 cents a pound for mails consisting of letters and post cards and 0.7 cents a pound for mails consisting of other articles, including parcel post, for distances up to 300 nautical miles; 14 cents a pound for mails consisting of letters and post cards and 1.75 cents a pound for mails consisting of other articles, including parcel post, for distances from 300 up to 1,500 nautical miles, and 21 cents a pound for mails consisting of letters and post cards and 2.8 cents a pound for mails consisting of other articles, including parcel post, for all distances exceeding 1,500 nautical miles."

Paragraph 3 of said section is omitted, and present paragraphs 4 and 5 are renumbered 3 and 4, respectively, effective July 1, 1937.

JAMES A. FARLEY,
Postmaster General.

SECOND ASSISTANT POSTMASTER GENERAL,
Washington, May 13, 1937.

INSTRUCTIONS RELATIVE TO AMENDING SECTION 2242, POSTAL LAWS AND REGULATIONS

With reference to the above order amending section 2242 of the Postal Laws and Regulations, postmasters at dispatching exchange offices will please inform operators of United States flag vessels of these changes of rates before dispatching mails on or after July 1, 1937.

The mail contracts under the Merchant Marine Act, 1928, will all expire by operation of law June 30, 1937. After that date mails will be dispatched at pound rates where they are assigned to lines now holding Merchant Marine Act mail contracts. The practice of dispatching small amounts of mails on certain freight lines now holding Merchant Marine Act contracts, will be discontinued June 30, 1937, unless the mails can be advanced in delivery by dispatch to such lines.

J. W. COLE.
Acting Second Assistant Postmaster General.

INSERT NO. 443. ORDER NO. 12598. FEBRUARY 21, 1939.

Effective March 1, 1939, the Postal Laws and Regulations are amended so as to omit present paragraphs 3 and

4 from Section 2242, and substitute therefor new paragraph 3, as follows:

"3. As an exception to the rates specified in paragraph 2 of this section, payment shall be made at the rates specified in the schedule stated below (unless service be covered by contract), for service by vessels of United States registry and by vessels of foreign registry which are entitled to pay from the United States, in transporting mails the United States is obligated to convey, that may be performed:

"(a) Onward from the Canal Zone covering mails dispatched from Canal Zone ports to any ports, except those in continental United States;

"(b) From any port in the countries signatory to the Conventions of the Postal Union of the Americas and Spain (except continental United States, Canada, and Spain) to any other port (except ports in continental United States, Canada, and Spain); also from ports in the West Indies or South America of countries not signatory to the Conventions of the Postal Union of the Americas and Spain, to any other port (except ports in continental United States, Canada, and Spain), covering regular mails originating in signatory countries;

"(c) Between Puerto Rico and the Virgin Islands or between Puerto Rico (or the Virgin Islands) and the Dominican Republic, and

"(d) Between Cuba and any port in Florida:

	Letters and cards	Other articles including parcel post where conveyance is obligated
	Cents per lb.	*Cents per lb.*
Up to 600 nautical miles	4	1.00
From 600 to 1,800 nautical miles	7	1.25
Over 1,800 nautical miles	12	1.75

* * * * * *

INSERT NO. 447. ORDER NO. 12755. APRIL 7, 1939.

Order No. 12598 of February 21, 1939, substituting new paragraph 3 to section 2242 of the Postal Laws and Regulations, is modified so as to have subparagraph (b) of said paragraph 3 read as follows:

"(b) From any port in the countries signatory to the conventions of the Postal Union of the Americas and Spain (except continental United States, Canada, and Spain, and Havana, Cuba, for mails forwarded from continental United States for transshipment) to any

other port (except ports in continental United States, Canada, and Spain, and Havana, Cuba, for mails destined to the United States); also from ports in the West Indies or South America of countries not signatory to the conventions of the Postal Union of the Americas and Spain, to any other port (except ports in continental United States, Canada, and Spain, and Havana, Cuba, for mails destined to the United States), covering regular mails originating in signatory countries."

AMENDMENTS TO THE POSTAL LAWS AND REGULATIONS

CHANGE IN RATES ALLOWED STEAMSHIP COMPANIES FOR THE CONVEYANCE OF MAILS TO FOREIGN COUNTRIES

INSERT NO. 525.
ORDER NO. 32394; DATED, AUGUST 8, 1946.

Effective August 15, 1946, the Postal Laws and Regulations of 1940 are amended so as to omit paragraphs 4 and 5 of Section 2240 and by changing paragraphs 2 and 3 of this Section to read as follows:

"2. Unless otherwise specially provided, payment shall be made for the transportation of United States mails and foreign closed transit mails on steamships of both United States registry and foreign registry, and for the transportation to the United States of mails which the United States is obligated to convey, at the rates of 8.8 cents a pound for mails consisting of letters and postcards and 1.1 cents a pound for mails consisting of other articles, including parcel post, for distances up to and including 300 nautical miles; 23.7 cents a pound for mails consisting of letters and postcards and 2.9 cents a pound for mails consisting of other articles, including parcel post, for distances from 300 up to and including 1,500 nautical miles, and 35.5 cents a pound for mails consisting of letters and postcards and 4.7 cents a pound for mails consisting of other articles, including parcel post, for distances exceeding 1,500 nautical miles.

"3. As an exception to the rates specified in paragraph 2 of this section, payment for mails which the United States is obligated to convey shall be made at the rates specified in the schedule stated below in the following services:

"(a) Onward from the Canal Zone covering mails dispatched from Canal Zone ports to any ports, except those in continental United States;

"(b) From any port in the countries signatory to the conventions of the Postal Union of the Americas and Spain (except continental United States, Canada and Spain, and Havana, Cuba, for mails forwarded from continental United States for transshipment) to any other port (except ports in continental United States, Canada, and Spain, and Havana, Cuba, for mails destined to the United States); also from ports in countries not signatory to the conventions of the Postal Union of the Americas and Spain, to any other port (except ports in continental United States, Canada, and Spain, and Havana, Cuba, for mails destined to the United States), covering regular mails originating in signatory countries.

	Letters and postcards	Other articles, including [illegible] which conveyance is [illegible] (3)
	Cents per pound	Cents per pound
Up to 300 nautical miles	6.7	1.50
From 300 to 1,500 nautical miles	11.8	2.00
Over 1,500 nautical miles	20.0	3.00

AMENDMENT TO THE POSTAL LAWS AND REGULATIONS

NONCONTRACT SERVICE

INSERT No. 578.

ORDER NO. 19250; DATED APRIL 6, 1949.

Section 2240, Postal Laws and Regulations of 1940, as amended, is further amended so as to add a new paragraph 4 to read as follows:

"4. As an exception to paragraphs 2 and 3 and in accordance with the free transit provisions of the convention of the Postal Union of the Americas and Spain, no compensation will be paid by the United States Post Office Department for the transportation of letters and prints mails originating in the United States and or countries signatory to the Convention of the Postal Union of the Americas and Spain when dispatched on vessels of the registry or flag of a signatory country, other than the United States or Canada, *as their conveyance by such vessels is an obligation of the country in which the vessel is registered.* [Italics supplied.]

AMENDMENTS TO THE CODE OF FEDERAL REGULATIONS; TITLE 39:

Compensation for Transportation of Foreign Mails

In § 120.7 *Compensation for transportation of foreign mails* amend paragraphs (b) and (c) to read as follows:

(b) *Definite rates:* Unless otherwise specially provided, payment shall be made for the transportation of United States mails and foreign closed transit mails on steamships of United States registry and foreign registry at the rates specified in the schedule indicated below:

Distance conveyed (nautical miles)	*United States mails, including parcel post, on steamships of United States registry (cents per pound—net weights)*	*All mails, including parcel post, on steamships of foreign registry; and foreign closed transit mails including parcel post, on steamships of United States registry (cents per pound net weights)*
Up to 300 miles	3.1	1.8
Over 300 up to 600 miles	3.1	2.5
Over 600 up to 1,000 miles	3.1	3.1
Over 1,000 up to 1,500 miles	3.6	3.6
Over 1,500 up to 2,000 miles	4.7	4.0
Over 2,000 up to 2,500 miles	4.7	4.4
Over 2,500 up to 3,000 miles	4.7	4.7
Over 3,000 up to 3,500 miles	5.0	5.0
Over 3,500 up to 4,000 miles	5.3	5.3
Over 4,000 up to 5,000 miles	5.6	5.6
Over 5,000 up to 6,000 miles	6.1	6.1
Over 6,000 up to 7,000 miles	6.5	6.5
Over 7,000 up to 8,000 miles	6.8	6.8
Over 8,000 miles	7.1	7.1

(c) *Exceptions to above rates.*—As an exception to the rates specified in paragraph (b) of this section, payment for the mails which the United States is obliged to convey shall be made at the rates specified in the schedule indicated below in the following services:

1. Mails, including parcel post, dispatched onward from Canal Zone ports to any other port.

2. From any port in countries signatory to the conventions of the Postal Union of the Americas and Spain (except continental United States and Canada) to any other port; also from ports in countries not signatory to the conventions of the Postal Union of the Americas and Spain to any other port covering regular mails originating in signatory countries:

Distance conveyed (nautical miles)	*All mails, including parcel post where conveyance is obligated (cents per pound—net weights)*
Up to 300 miles	1.3
Over 300 up to 600 miles	2.0
Over 600 up to 1,000 miles	2.6
Over 1,000 up to 1,500 miles	3.1
Over 1,500 up to 2,000 miles	3.5
Over 2,000 up to 2,500 miles	3.9
Over 2,500 up to 3,000 miles	4.2
Over 3,000 up to 3,500 miles	4.5
Over 3,500 up to 4,000 miles	4.8
Over 4,000 up to 5,000 miles	5.1
Over 5,000 up to 6,000 miles	5.6
Over 6,000 up to 7,000 miles	6.0
Over 7,000 up to 8,000 miles	6.3
Over 8,000 miles	6.6

The foregoing amendment shall be effective August 1, 1954. (R.S. 161, 396, 398, as amended, 4009, as amended, secs. 304, 309, 42 Stat. 24, 25; 5 U.S.C. 22, 369, 372, 39 U.S.C. 654.)

—PMG Order 55673, June 30, 1954 [This is insert 770 to the *Postal Laws and Regulations of 1948*, and amends sec. 120.7 pars. (b) and (c).]

14. From about January 1939, the plaintiff's ships operated between ports of the United States and the countries on the east coast of South America. There was some interruption to this service during World War II, but it was resumed in 1946, and has continued. On outbound voyages from the United States, plaintiff carried mails tendered to it by the United States Post Office. On the outbound voyages from the ports of South America, it carried mails tendered to it by the Postal Administrations of Brazil, Uruguay and Argentina. This included mails from Paraguay, interport mails and mails destined for the United States and for transit through the United States.

15. On January 3, 1945, the plaintiff instituted action in this court by filing case No. 46280. By that petition it claimed monies it regarded as due it for the carriage of mail outbound from ports of the east coast of South America on voyages of its vessels between those ports and ports of the United States. As a practical matter the facts as found by the court in that case were stipulated by the parties

with the exception of the proper translation and the legal effect in Brazil of a law decree of that country.

16. In case No. 46280, the parties stipulated by counsel at a trial session that the plaintiff asked and received packet privileges for its vessels under the packet laws and regulations of Argentina, Uruguay and Brazil; and that the plaintiff's vessels received certain benefits under said laws and were obligated to perform certain burdens under said laws.

17. The entire claim as to the northbound mail from Argentina and part of the northbound mail from Uruguay was abandoned by the plaintiff in case No. 46280 pursuant to the following stipulation between counsel for the parties at a trial session:

> 6. It is agreed that acting under its laws, particularly Articles 44 and 45 of the Laws of October 19, 1923, under which vessels having packet privileges were obligated to carry mail gratuitously, Argentina specifically required the applicant to carry its mail gratuitously under said laws. That, accordingly, no payment is due from the United States for carriage of mails tendered by the Argentine post office.
>
> 7. It is agreed that under the laws of Uruguay, particularly the Executive Resolution of July 7, 1933, all ships having packet privileges are obligated to carry the mail gratuitously; and further that said law was suspended for the war period from July 1, 1940, until November 7, 1946, by the Uruguayan Government; and accordingly that no payment is due from the United States for carriage of mails tendered by the Uruguayan post office up to July 1, 1940, but that payment is due from the United States on appropriate documentary proof of carriage in form acceptable to the United States Post Office for the period during which the Uruguayan postal packet law was suspended, i.e., from July 1, 1940, to the date of suit.

18. The parties in case No. 46280 similarly agreed that payment from the United States was due the plaintiff for the carriage by the plaintiff of mail northbound from Brazil until June 3, 1941.

19. The plaintiff's claims in the earlier case related to mail carried no later than 1942. The claim for the carriage of all mail involved in the instant case relates to that carried by the plaintiff after World War II.

20. After 1946, the plaintiff submitted claims for the carriage of mails for which it here sues. They were, on April

17, 1953, returned unpaid by covering letter of that date from the Assistant Postmaster General which reads as follows:

> Reference is made to claims submitted by your company for the conveyance of north-bound mail by your vessels from Brazil, Argentina and Uruguay since 1946.
>
> In view of the decision of the United States Court of Claims on April 3, 1951 (Case No. 46280) involving the same type of mails conveyed by your vessels prior to 1942 and in view of the fact that the Supreme Court denied your petition for certiorari on November 13, 1951, it appears that no compensation is payable by this Department for the conveyance of mails from Brazil and Uruguay or for mails conveyed from Argentina by vessels of your company which were granted special packet privileges by the Argentine government.
>
> Under the circumstances the claims as submitted cannot be certified for payment by this office and are returned herewith.

21. The plaintiff has not received compensation from Brazil, Uruguay, Argentina, or the United States for the carriage of the mail for which it now claims payment by this suit.

22. As of March 1, 1956, the "free transit" provisions of the Postal Convention of the Americas and Spain were no longer binding upon the United States because of a reservation this country took in the 1955 convention at Bogota, Colombia.

23. The Annual Report of the United States Postmaster General for the Fiscal Year Ending June 30, 1955, provides in part as follows:

> INTERNATIONAL TRANSPORTATION
>
> The Department will propose to the Postal Union of the Americas and Spain Congress in Bogota, Colombia, October 1955, that the free transit provision of the Convention be made optional to the member countries.
>
> This provision now requires that each country furnish its postal transportation facilities and maritime shipping services free of charge to other member countries. As a consequence, the United States is required to pay its own steamship companies for the service they perform for the other member countries. And as the United States has by far the greater number of ships, this results in disproportionate use of our facilities and the expenditure of approximately $1,200,000 annually. The

Department plans to terminate this arrangement in fiscal 1956.

24. The Annual Report of the United States Postmaster General for the Fiscal Year Ending June 30, 1956, reads in part as follows:

INTERNATIONAL SERVICE IMPROVEMENTS

Several proposals made by our representatives to the Congress of the Postal Union of the Americas and Spain, held in Bogota, Colombia, in October 1955, were adopted. These included:

1. Bulk billing of parcel post, instead of listing each parcel individually.

2. Optional increase of weight limits from 22 to 33 pounds on single packages of printed matter.

3. Elimination of the PUAS international reply coupon, in favor of the standard Universal Postal Union coupon.

Our proposal to make the free transit provisions of the Convention optional was disapproved. Therefore, the United States formulated a reservation which will reduce United States transportation costs by about $1.2 million annually. The reservation relieves the United States of responsibility for paying our steamships for transporting the mail of other PUAS countries and requires member countries to pay the Department for transporting their transit mail across United States territory.

25. On January 27, 1956, Albert F. Chrystal, Vice President of the plaintiff, sent the following letter to the Assistant Postmaster General:

RE: REQUEST FOR DESIGNATION AS A "THIRD SERVICE"

Moore-McCormack Lines, Inc. hereby makes application for its designation as a "Third Service" within the meaning of the Convention of the Universal Postal Union.

This request is considered to be necessary due to the termination on March 1, 1956, of the participation by the United States in the "free transit" provision of the Convention of the Postal Union of the Americas and Spain.

Pursuant to such "free transit" provisions our Moore-McCormack vessels have performed certain services for South American postal administrations gratis for almost twenty years and such foreign postal administra-

tions have become accustomed to the receipt of such services gratis and have not been accustomed to dealing directly with us. On the other hand, they have been long accustomed to having regarded us as an instrumentality of our government and the formal designation of us as a "Third Service" seemingly would be both consistent and appropriate.

The experience of this company confirms our belief that the only way it can effect collection for its services is through being considered a "Third Service" by the United States Post Office Department. Our representatives in Uruguay have been advised that the local postal administration under local laws will not pay us for any postal transportation. In Argentina no payment for postal transportation can be expected because of a local postal packet privilege law and, in addition, we were never paid for parcel post accounts although such were not disputed to be due us. Brazil, however, pays us for parcel post carriages but the rate is quite low. It is not known what the attitude of the Postal Administration of Brazil will be as to payment for the carriage of U.P.U. Convention mails.

It is believed that these countries have no basis on which to refuse to pay for "Third Service." If Moore-McCormack is designated a "Third Service" it is expected that payments will be made for the services it performs.

The course that Moore-McCormack wishes to take is also suggested by the experience of the United States air carriers in endeavoring to collect from Brazil and Argentina and the very commendable action of your Department in effecting collections for the United States air carriers. Our reference to the American air carriers does not imply that we are without a precedent as to the appointment of a surface carrier as a "Third Service," for we note that the United States Lines has been so designated.

Insofar as our Government enables us to collect mail pay from foreign governments, it furthers its own pecuniary interest both tax-wise and as to recapture of subsidy paid by our government to us. Half of our earnings in excess of 10% upon our invested capital are subject to periodic recapture up to the full amount of the subsidy.

26. On March 5, 1956, the letter quoted above was answered by the Assistant Postmaster General in the following terms:

I have given careful consideration to your request of January 27, 1956, that the vessels of Moore-McCormack Lines, Inc. be declared as "Third Services" by the Post Office Department.

The decision to invoke the United States reservation concerning the "free transit" provision of the Bogota Convention of the Postal Union of the Americas and Spain, which became effective March 1, 1956, was just made a short time ago. It has been noted that your principal reasons for asking for this designation are predicated on the withdrawal of the United States from the "free transit" provision of the Convention and on an assumption that the countries you serve will not compensate you for the services performed.

You have also referred to the fact that there is a precedent in that the vessels of the United States Lines Company are designated as "third services". The fleet of this company was declared as "third service" in 1924 for reasons which I believe do not exist today. In fact just about the time your letter was received in the Department, some of the staff members advised me that they were about to recommend that the designation as "third service" for the United States Lines be discontinued. Actually they are of the opinion that it is a detriment to the company because under this arrangement the countries it serves are required to pay in dollars and as a result its vessels are not being used as extensively today as they might be if the countries involved could pay in local currency.

From conversations with representatives of the other steamship companies serving other member countries of the Postal Union of the Americas and Spain, we understand that they are going ahead with arrangements to make every effort to collect from the dispatching countries for the transportation of their mails. On the other hand it appears that your company has assumed that the Latin American countries you serve will not compensate you under the changed procedure and hence have asked to be declared a "third service". Perhaps, based on your experience, this assumption is correct but it seems to me that now is the time for your company to make a real effort to collect from these countries for the services rendered.

If after a reasonable time it is apparent that you will not be successful, the Department is willing to give you such assistance as it may be able to render in liquidating the obligations owing you by the dispatching countries.

27. On September 24, 1958, the plaintiff sent the following letter to the Assistant Postmaster General:

> You will recall that at the time the United States took a reservation to the provision concerning "free and gratuitous transit" of the Convention of the Postal Union of the Americas and Spain, Moore-McCormack Lines expressed its deep concern that it might encounter difficulty acting alone in collecting for the transportation of the mails of Brazil, Argentina and Uruguay.
>
> This company wrote you on January 27, 1956, requesting that you effect collection from the Postal Administrations of Brazil, Argentina and Uruguay. You replied on March 5, 1956, suggesting that:
>
> "Now is the time for your company to make a real effort to collect from these countries for the services rendered. If after a reasonable time it is apparent that you will not be successful, the Department is willing to give you such assistance as it may be able to render in liquidating the obligations owing you by the dispatching countries."
>
> The Department of State, at the request of this company has made a test case of the mail transportation services performed for Brazil by flag vessels of the U.S. registry. It can advise you of the status of its efforts. In addition to seeking the aid of the Department of State representatives of the company both before March 1, 1956, and since have frequently called upon high postal officials of Argentina, Brazil and Uruguay and have advised these officials that in the absence of adherence by the United States to the "free and gratuitous transit" provision of the Postal Union of the Americas and Spain that the company nuts and would expect payment by their respective administrations for the service performed for them. Statements of services performed and amounts due, based on rates currently in use, have been presented to each administration. Only one postal administration, Argentina, has categorically refused to pay for the services performed and documents attesting to this fact are enclosed. This company has pressed and continues to press the postal administrations of Uruguay and Brazil for answers. Based upon experience and the advice of local management and local counsel, this company is convinced it is hopeless to pursue this course.
>
> The spirit of the final paragraph of your letter quoted above is greatly appreciated. For over two and a half years this company had made a real effort to collect and has failed; we believe that you will agree that after a reasonable time it has become apparent that we will not

be successful in our present course. Therefore your assistance is most urgently required and requested.

Recently Uruguay has allowed an admitted debt for air transportation to become so far in arrears that your Department is now in process of collecting for air services performed by U.S. air carriers for Uruguay. For some years your Department has collected from Argentina and Brazil for air services performed by U.S. air carriers. It is believed that you do not intend to accord more favorable treatment to U.S. air carriers than to U.S. vessels.

Your close study of Article 78, Frais de transit (Transit charges), Universal Postal Union, Convention of Brussels, 1952, is invited (English translation supplied).

"1. With the exceptions prescribed by Article 79, closed mails exchanged between two administrations or between two offices of the same country through the services of one or more other administrations (third services), are subject, for the benefit of each of the countries traversed or whose services participate in the conveyance, to the transit charges indicated in the table below. Such charges are borne by the administration of the country of origin of the dispatch.

"2. Barring agreement to the contrary, maritime conveyances effected directly between two countries by means of ships of one of them are considered as third services."

The services performed by this company are "third services" as defined by Convention of the Universal Postal Union. During the World War II when the United States Government was operating vessels of U.S. shipping companies, the Post Office Department billed for the services of these vessels in carrying foreign mail, based on the maritime transit rates of the Universal Postal Union except where it had foregone this right by adhering to the "free and gratuitous transit" provision of the Convention of the Postal Union of the Americas and Spain. The status of Moore-McCormack Lines differs little from when the Government operated its vessels as far as this problem is concerned. Its vessels are used to transport United States mail; its vessels are of United States registry. The subsidy relation Moore-McCormack has with our Government is important. As a portion of the earnings of Moore-McCormack are subject to periodic recapture up to the full amount of its subsidy, the failure of this company to receive reimbursement for services performed by it may serve as a diminution of funds to

which our Government may be entitled. Based upon the Universal Postal Union maritime transit rates currently paid by your Department, the value of the services involved is now approximately $100,000.00.

Your interest in helping solve these difficult problems is deeply appreciated.

28. The reply to the above-quoted letter was sent on November 6, 1958, and reads as follows:

A reply to your letter of September 24 has been held in abeyance pending study and an opinion by our General Counsel.

It has been pointed out that the local laws of Argentina, Brazil, and Uruguay require gratuitous transportation of mail in return for your company enjoying postal packet privileges. Hence, in a sense you have a contract with those countries which does not brook interference by this Department.

There is a possibility that if we declared Moore-McCormack a third service the three countries involved would take some action against you, either in the form of revoking the postal packet privileges or even something more drastic. That, in turn, could lead to complications.

Another complication is that to designate Moore-McCormack now a third service would be in conflict with the Post Office Department's position in cases pending in the Court of Claims.

You mention that the Department assists American flag air carriers to obtain payment from foreign countries and consequently feel that this justifies doing likewise with steamship lines.

However, there is a difference. None of the South American countries involved requires air carriers to transport air mail free of charge, either as a condition of entry or in return for special privileges as they do in the instance of steamship lines. Thus, those countries appear to be under legal obligation to make payment to the air carriers and any assistance we render is to collect a just debt and not to enable the airlines to evade a legal obligation they owe to such foreign countries.

My letter of March 5, 1956 stated that the Department is willing to give you such assistance as it may be able to render. However, when viewed in the light of the circumstances set forth above, I believe you will agree there is nothing more we can do.

Believe me, I am extremely sorry to find it necessary to answer you in this vein.

29. Under the law of Argentina, the constitution, the laws enacted by Congress and treaties concluded with foreign nations are the supreme law of the land. The provisions of Article 3 of the Madrid Postal Convention of the Americas and Spain, quoted in finding 6, are therefore an integral part of Argentine law, considered to be a treaty with foreign powers. Executive decrees and Resolutions issued by the executive power, which may be inconsistent with the provisions of the constitution, laws of Congress or treaties, must yield to the provisions of the treaties.

30. There is in evidence as defendant's exhibit 11 a pamphlet in the Spanish language entitled "DIGESTO MARITIMO Y FLUVIAL". According to the witness by which it was identified, it was issued by the Maritime National Prefecture, apparently an arm of the executive of the Argentine Government. It was some reference to packet privileges. Although some portions were translated into the record, such translation has not aided the court in determining the state of the law in Argentina concerning the issue in this case. This is so because it has not been explained who issued the regulation, if it was a regulation; decree, if it was a decree; or by what body the law was enacted, if it was a law.

31. There is no satisfactory evidence in the record that Argentina, under its laws, required ships flying the flags of countries signatory to the Postal Convention of the Americas and Spain to carry mail without compensation in exchange for the granting by Argentina of packet privileges.

32. Postal packet privileges were in fact granted to several of the plaintiff's vessels which were effective during the period for which claim is made herein.

33. In early 1957, pursuant to formal request made by the plaintiff, the General Director of the Ministry of Communications of Argentina issued the following certificate to which the seal of the Ministry was affixed, the translation from Spanish of which reads as follows:

ARGENTINE REPUBLIC
MINISTRY OF COMMUNICATIONS.
SEAL OF THE MINISTRY OF COMMUNICATIONS, GENERAL ADMINISTRATION.

File N° 799/MC/57.

The Ministry of Communications of the Nation hereby certifies that all the vessels of "Moore-McCormack Lines, Inc." which transported the mail gratuitously out of our country from 1948 through the period ending February 29th, 1956 did so in full compliance with the obligations arising from the Conventions of the Postal Union of the Americas and Spain of Rio de Janeiro (1946) and Madrid (1950), without the necessity of applying the regulations concerning Postal Packet Privileges.

It is hereby stated that the Attorney General (Procuración del Tesoro de la Nación) has issued his favorable opinion in order that the present certificate be extended in the above mentioned terms.

Given, signed and sealed in the City of Buenos Aires, Federal Capital of the Argentine Republic, on the 21st day of the month of February of the year 1957.

34. On November 7, 1946 an executive decree, No. 8011, was issued by the President of the Republic of Uruguay which promulgated regulations for the concession of Packet Privileges. No translation from the Spanish is in evidence, though the text in Spanish is a part of defendant's exhibit 3, in evidence.

35. On January 3, 1952, the President of the Republic of Uruguay issued decree No. 20730, the translation from the Spanish of which reads in part as follows:

REGULATIONS FOR THE CONCESSION OF A PATENT OF PACKET PRIVILEGES.—

DECREE N° 20730. 3RD. JANUARY 1952.

Ministry of National Defense—Ministry of Foreign Affairs—Ministry of Finance—Ministry of Industry and Labour—Ministry of Public Health.—

Montevideo, 3rd January 1952.

Pursuant to the antecedents, by which the Commission appointed by Decree N° 19194 of 28th August 1951, to revise the Regulations for Packet Privileges approved by Decree N° 8011 of 7th November 1946, submits for the consideration of the higher authorities a draft of

proposed Regulations to substitute those at present in force:

Whereas the draft of Regulations for the concession of a Patent of Packet Privileges, now submitted for consideration, has been composed by a Commission comprising representatives of all the organizations interested in its application, taking as a base for same the general framework of the previous Regulations, having rectified the deficiencies and inconveniences which its subsequent application made evident, and endeavoring at the same time to compile a more rational and precise text:

The President of the Republic Decrees:

Art. 1°.-That the Regulations for the Concession of Patents of Packet Privileges be approved as worded in administrative documents Series * * *, in substitution of the actual Regulations for Packet Privileges approved by Decree N° 8011 of 7th November 1946.-

Art. 2°.-That the mission entrusted to the Commission appointed by Decree N° 19194 of 28th August 1951 is declared terminated, and thanks are tendered to the members of that Commission for the important services rendered.-

Art. 3°.-That the present Decree be issued, and published together with the approved Regulations, and filed. Sgd:MARTINEZ TRUEBA—Coliar Ortiz—Alberto Dominguez Campora—Hector Alvarez Cina—Jose G. Lissidini—Carlos A. Viana Aranguron.-

REGULATIONS FOR THE CONCESSIONS OF A PATENT OF PACKET PRIVILEGES

ART. 1.—Packet Privileges signify the special advantages or prerogatives conceded to national and foreign vessels in accordance with the categories specified in these Regulations. These Privileges shall be conceded by Government Authority, which reserves the right to reject or cancel same if necessary even in circumstances where all the required conditions have been complied with regarding the vessels for which same were solicited.-

ART. 2.—The petition for a concession of a Patent of Packet Privileges must be presented to the Merchant Marine Authority (Prefectura General Maritima), whose duty it will be to verify whether the vessel possesses the required qualifications for the concession to be proceeded with.- The petitioning Agency is required to present simultaneously with this petition, a notification to the Port Health Authorities (Direccion de

Sanidad Maritima y Fluvial) in order that these Authorities may proceed opportunely to verify that the vessel complies with the sanitary requirements of the Port Health Regulations.– A similar procedure is also to be observed with the General Postal Authorities, in order that they may effect such inspection as is attributable to them.– The Report, submitted by these three Authorities, will then be placed before the higher authorities for determination, providing the vessel complies with the requirements of the present Regulations. Should the Government Authority decide in favour of the petition, the Profectura General Maritima will issue the Certificate granting the status of a privileged vessel, and shall notify the Customs Authorities, Postal Authorities, National Port Administration, and Port Health Authorties in writing, giving the characteristics and itineraries of the privileged vessel.–

* * * * *

Art. 4.—The Patent of Packet Privileges is granted for a period of four years, and to obtain its renewal the interested party must present a furtlier petition in accordance with the procedure established in Art. 2 of these Regulations.–

Art. 5.—If, during the period for which Packet Privileges have been granted to a vessel, she should change her flag or name, the Packet Privileges automatically become void, and, if they so desire, the interested party will have to present a new petition in accordance with the procedure established in Art. 2. of these Regulations.

Art. 6.—In the petition, applying for a Patent of Packet Privileges, the interested party must state the category in which they desire the vessel to be inscribed, and also submit the following information: Name and address of Owners or Agents: name of the ship: flag under which she sails: port of registry: registered tonnage: year built: system of propulsion: speed per hour in knots; number of crew: maximum duration of voyage: and determination of an itinerary when required.

Art. 7.—The party interested in obtaining a Patent of Packet Privileges, must produce the Classification Certificate from the Register in which the vessel is classed.– Failing this the Technical Committee of the Merchant Marine Authority will determine whether the vessel is sufficiently safe and seaworthy to be granted a Patent of Packet Privileges.– In such case the Committee mentioned is empowered to require the production of the Official Logbook and Engineer's Logbook for inspection.–

ART. 8.—The Profectura General Maritima (Merchant Marine Authority), the Customs Authorities, the National Port Administration, the General Postal Authorities, and the Port Health Authorities, shall keep a Register of the vessels holding Packet Privileges, as well as a list of the ships which have been granted "Provisional Patents".

ART. 9.—"Passenger ships" are understood to mean vessels with accommodation for more than 12 passengers.—

CATEGORY OF PACKET PRIVILEGES

ART. 10.—Patents of Packet Privileges shall be classified in the following categories:—

Category 'A'—This Category shall comprise:

A)—National or Foreign vessels with accommodation for more than 100 (one hundred) passengers, with fixed itinerary, which carry mails, with or without cargo.—

B)—Ships pertaining to Royal Mail Lines in accordance with the provisions of the Decrees of 23d March 1831 and 27th January 1851.

C)—Vessels on tourist cruises, the arrival of which must be notified by the Agents with 24 hours anticipation.

Category 'B'—This Category shall comprise:

A)—National or Foreign Vessels with accommodation for more than 40 (forty) and up to 100 (one hundred) passengers, inclusive: with fixed itinerary, which carry mails, with or without cargo.—

B)—National or Foreign vessels with accommodation for more than 40 (forty) passengers, without fixed itinerary, which carry mails, with or without cargo.—

Category 'C'—This Category shall comprise all National or Foreign vessels not included in Categories 'A' & 'B'.

OBLIGATIONS OF VESSELS HOLDING PACKET PRIVILEGES.

National or Foreign Vessels of Category 'A'

ART. 11.—All National or Foreign vessels holding Packet Privileges of Category 'A', or whose Petition for same is under consideration, or as the case may be, their Agents, are subject to the following obligations:

a) To carry free of charge all Mails and Parcel Post packages delivered to them by the General Postal Authorities for the ports of their itinerary or ports of call in transit.— It is understood that this obligation applies exclusively to Mails and Parcel Post from or for ports of the Republic.— The Agent or Owner has the obli-

gation to notify the General Postal Authorities in each case, and with at least 4 (four) days anticipation, of the sailing of a vessel, in which advice must be given: name of the ship, nationality, date and hour of sailing, ports of call, and destination.- In the event that there should be any alteration in the itinerary, or date and hour of sailing of the vessel, subsequent to such notification, the Agent or Owner must advise the General Postal Authorities of such alterations with 36 (thirty six) hours anticipation of the sailing of the vessel from the ports of the Republic.- Similarly Agencies, to whom vessels carrying Mails and Parcel Post for the Republic come consigned, must inform the General Postal Authorities, with 6 (six) hours anticipation of the vessel's arrival in port, of the quantity of mailbags for this destination. In loading and discharging operations, preference must be given to mails and postal packages.

b) Should the vessel not come along-side the quay, the Companies have the obligation to provide, at their own expense, suitable means for transporting Mails and Parcel Post packages from the quay to the ship, or vice-versa.- Any expenses incurred in such operations to be for the account of the ship.

c) *The ship's authorities are entrusted with the guardianship and custody of the mails, in accordance with the responsibilities imposed by national laws, regulations in force and international conventions.*- [Italics supplied]

d) Vessels of more than 500 (Five hundred) tons are required to provide an adequate compartment, away from the vicinity of the engines and boilers, for the safe storage of the mails.- Such compartment must be fitted with such elements as the General Postal Authorities deem necessary for the safe-keeping of valuable packages, and the classification of the mails.- This compartment is also to be the living-room for the Mail Official, who is to receive the same treatment as a first class passenger.

e) In case the General Postal Authorities do not deem it convenient for a Mail Official to embark in the ship, as indicated in the previous clause, the ship's authorities will be encharged with the care of the Mails and Parcel Post packages, under the obligations and responsibilities established in clause c).

f) Should a National vessel, carrying a Mails Official, find herself in conditions which prevent her continuing on her voyage, the ship's authorities are required to deliver the Mails and Parcels Post to the nearest Post

Office.- Any expenses incurred in this operation are for account of the ship.-

g) Vessels of National registry are obliged to call at all the ports of their itineraries, for the delivery and reception of Mails and Parcels Post packages, save in cases of force majeure which will have to be justified before the Maritime Authorities at the first port in the Republic at which the ship may call.-

h) National and Foreign ships of this Category have the obligation to provide a free passage, including maintenance, from the ports of the Republic to those of their itineraries or vice-versa, to one third class passenger (repatriated or deported person, or subordinate member of an official mission).- This obligation is applicable to each ship and on each voyage, it being understood that should this free passage not be availed of on any voyage it cannot be transferred to a subsequent voyage.-

i) The Shipping Companies are required to concede a rebate of 15% on single passages, and 10% on return passages to Diplomatic Officials and career Consuls who, whether accompanied or not by their families, are proceeding to take up their appointments or returning to the Country on a summons from the Ministry of Foreign Affairs.- A rebate of 50% shall also be made in their excess bagggage charges.-

j) The Companies are also to concede priority in the reservation of passages for Diplomatic and Consular Officials who, whether accompanied or not by their families, are proceeding to take up their appointments, or are returning to the Country on a summons from the Ministry of Foreign Affairs.- In the application of this clause and the preceding one, the term "families" signifies the spouse and such persons as are directly related in the first degree.-

k) The authorities of ships in this Category are required to receive from the Consular Authorities of the Republic sealed envelopes or parcels for the Government, being responsible for same until their delivery to the Maritime Authority or the national port at which they call.- Shipping Agents with offices in Montevideo are required to accept from the Foreign Office sealed envelopes and packets destined for the Diplomatic and Consular Missions abroad, it being the duty of the Masters to see that these are promptly handed over on arrival at the port of destination.- After landing, the delivery of such sealed envelopes and packets shall be for account of the Foreign Office.-

National or Foreign Vessels of Category 'B'

ART. 12.—National or Foreign vessels holding Patents of Packet Privileges of Category 'B', or whose Patents are in process of being issued, or as the case may be, their Agents, are required to comply with the provisions stipulated in clauses a), b), c), d), e), f), h), i), j), and k), of Article 11 of these Regulations.

National or Foreign Vessels of Category 'C'

ART. 13.—National or Foreign Vessels holding Patents of Packet Privileges of Category 'C', or whose Patents are in process of being issued, or as the case may be, their Agents, are subject to the following obligations:

a) To carry free of charge, whenever necessary, Mails and Parcels Post packages as established for National or Foreign vessels of Category 'B'.- The General Postal Authorities will utilize the services of these ships for the carriage of Mails and Parcels Post packages when vessels, holding Packet Privileges of the other Categories plying these routes, are not available.-

b) To inform the General Postal Authorities of any alteration in the probable calls which the ship might make en route.-

c) To comply with all provisions stipulated in clauses b), c), and f) of the Article 11 of these Regulations.-

PREROGATIVES WHICH PACKET PRIVILEGES CONFER.

ART. 14.—All vessels holding Packet Privileges shall have priority in entering or leaving ports, mooring and docking, and to effect loading and discharging operations in all ports of the Republic, in accordance with the following:

a) Vessels holding Packet Privileges of Category 'A' shall have priority over other vessels using the piers and quays to effect their operations; after which it will be the turn of those pertaining to Category 'B', and thereafter those of Category 'C'.-

b) In ports where piers and quays do not offer available space, or when the number of winches may be insufficient, a vessel of Category 'A', which is continuing its voyage beyond this port, shall have priority over other vessels of the same Category making this port the terminal point of their voyage.-

c) Vessels holding Packet Privileges of Category 'A', which make this port the terminal point of their voyage, shall follow in order of priority; however privileged vessels of Category 'B' which may happen to be in port,

may operate in the proportion of 1 to 2 with regard to those of Category 'A', after which those of Category 'C' shall follow in order of priority in the proportion of 1 to 3.–

d) National vessels shall have priority in the proportion of 2 to 1 over those of another flag (although holding the same Category of Packet Privilege) which happen to be in port.–

e) Vessels holding Packet Privileges of Category 'A' carrying passengers only, shall have priority over those of the same Category known as "mixed" (Passengers and cargo). The same rule shall apply to privileged vessels of Categories 'B' and 'C'.–

f) In cases where the available space on the piers and quays, should be insufficient, vessels holding Packet Privileges, bringing merchandise of a perishable nature for immediate delivery, or goods of prime necessity for urgent demand, shall have priority in berthing over vessels of the same Category in the first instance; and, in the second instance over any vessel of any Category.– In such cases the interested party shall apply to the National Port Administration, who will consult the competent authorities and verify the character claimed for the merchandise.–

ART. 15.—All vessels holding Packet Privileges are authorized to enter and leave port at any hour of the day or night without having to observe any formalities other than those required for ordinary hours.– Vessels of Categories 'A', 'B', and 'C' may commence their operations immediately on ordinary days or holidays, the Shipping Agent being authorized to present the manifests, with the corresponding rectifications, within the period established in the Customs Regulations.

ART. 16.—In the event of there being no berths available at the piers or quays, the National Port Administration, at the request of an interested party, may order vessels, not operating during ordinary hours, to vacate the berths in favour of vessels desiring to operate under such circumstances.– On completion of operations, or of the period or day of special work, the vessel which has made use of this priority shall vacate the berth in favour of the displaced ship.– Each vessel shall bear the costs of her own shifting expenses.– This priority shall apply to vessels of the same category; and for the benefit of a ship of a superior category over one of an inferior category.– Should the National Port Administration deem it advisable for the port operations, they may assign the displaced vessel to another berth instead of the berth originally occupied always providing this does not prejudice in the interests of the vessel.

ART. 17.—Vessels not holding Packet Privileges will enter port in the order of their arrival, between sunrise and sunset, and may only operate during ordinary working hours on ordinary working days; and the Agents or Owners must present the manifests to the Customs Authorities in accordance with the Customs regulations in force.– However vessels not holding Packet Privileges, calling exclusively for bunkers or provisions, may enter or leave port at any hour, but this does not give them the right to a quay berth.–

ART. 18.—Agents of vessels of Categories 'A' and 'B' may solicit, without charge, survey reports from the Technical Commission of the Merchant Marine Authority (Prefectura General Maritima).–

GENERAL DISPOSITIONS

ART. 19.—To ensure compliance with the requirements stipulated in these Regulations, the Prefectura General Maritima (Merchant Marine Authority) may hold inspections in all cases they may deem necessary. The other Authorities who intervene in the granting of a Patent of Packet Privileges have the same rights.– Should those latter find any modifications which constitute an infraction of the requirement demanded by the respective Regulations, they shall communicate the same to the Merchant Marine Authority, who will confirm the infraction by a further inspection effected jointly with an official of the denouncing Organization and a representative of the Agency to whom the ship is consigned.– The confirmation in either case of the infraction of the present Regulations shall entail the application of the corresponding penalty.–

ART. 20.—The Prefectura General Maritima, through the medium of the Merchant Marine Authority, is the competent authority to exercise vigilance over the compliance with the requirements stipulated in the present Regulations and is empowered to impose the corresponding penalties on infractors.–

PENALTIES

ART. 21.—Infractions of the present Regulations, as well as of the rules applicable to privileged vessels, may entail the cancellation of the Patent granted, which, on being reported by the Prefectura General Maritima, will be ordered by the Executive Power (the Supreme Government Authority).–

ART. 22.—Once a vessel has had her Patent of Packet Privileges cancelled, a renewal may not be solicited until one year has elapsed since the measure was applied.–

36. The plaintiffs did request and receive packet privileges for several of its ships.

37. An executive decree in Uruguay which conflicts with the terms of a law or treaty (or Postal Convention) must yield to the latter. Since the "free and gratutious transit" provisions of the Convention are the law of the land in Uruguay, at least until the United States took a reservation to those provisions, effective March 1, 1956 in the Bogotá Convention, the law of Uruguay would seem to require the carriage of mail by the United States at its expense when carried on American flag vessels from a port in Uruguay.

38. On December 4, 1958, a certificate was issued at the request of the plaintiff and with the consent of the Ministry of Industry and Labor of Uruguay by the General Secretary thereof. A translation from the Spanish is as follows:

BN 2097979

TRADUCCION N° 10.511/58.

GENERAL POST OFFICE DIRECTION. File N. 103/57-12/4/58. SGS. I CERTIFY: That the free carriage of mail on the steamers of Moore-McCormack Lines, Inc., of the United States of America over the period 1948–1956 was made in compliance with the Convention of the Postal Union of the Americas and Spain (Union Postal de las Americas y Espana). And, upon the request of the interested concern, and with the corresponding consent of the Ministry of Industry and Labor (File Nr. 103/57) dated 12/4/58; this Certificate is issued in Montevideo the twentyseventh day of June of the year Nineteenhundred and fifty eight. Sgd. ZULEMA JARDON. General Secretary. Visaed. Sgd. Colonel RUBEN M. MACCHI. Post-Office Comptroller.

Seal of the General Post-Office Direction. The document is issued on a Post-Office sheet of paper Nr. Bl—138675.

THE ABOVE IS—TO THE BEST OF MY KNOWLEDGE AND BELIEF A TRUE TRANSLATION OF THE SPANISH CERTIFICATE AND A COPY HEREOF IS KEPT ON FILE UNDER NR. 10.511/58.

ISSUED IN MONTEVIDEO THIS TWENTIETH DAY OF JULY NINETEENHUNDRED AND FIFTYEIGHT, UNDER MY HAND AND SEAL.

(S) SUSANA BERRO GALLEGOS
PUBLIC TRANSLATOR.

39. In 1946 the plaintiff's vessels resumed the service to Brazil which had been interrupted by World War II. These ships carried mail southward from the United States to Brazil, and on the northbound voyages carried mail tendered by the Postal Authorities of Brazil.

40. On September 18, 1946, Brazil adopted and promulgated a new constitution. Article 141, as translated from the Portuguese, provides in part as follows:

> Paragraph 16. The right of property is guaranteed, except in the case of expropriation for public necessity or utility, or in the social interest, preceded by just compensation in cash. In the event of imminent danger, such as war or internal commotion, the proper authorities may use private property, if this shall be required for the public good, the right to subsequent compensation being, however, assured.

41. In Brazil the Constitution is the pre-eminent law. Treaties and conventions between Brazil and foreign powers next have precedence, being superior to Acts of the Congress. In addition to Acts of the Congress, there are Executive decrees which must conform to the Constitution and laws, since they are issued for the enforcement of such laws.

42. In October 1913, Decree No. 10,524 was issued which regulated the issuance of packet privileges and imposed certain obligations upon those ships to which packet privileges were issued. By this decree, packet privileges were to be issued *only to National ships of Brazilian construction, or ships built or purchased in a foreign country but registered in Brazil.* This decree provided in part, as translated from the Portuguese, as follows:

> ART. 159.—In order to have the right to these privileges, the enterprises, companies or owners of the ships must prove that the same are registered, in accordance with this regulation and that they have been surveyed at the proper time, also meeting or undertaking to meet all specially stipulated conditions demanded by the Ministry of Transport and Public Works, under terms or contracts made with the said Ministry, besides accepting the following obligations:

b)—to transport free of charge on their ships the mail bags, bringing them from shore to ship, or "vice-versa", or to deliver them to the Agents of that Department duly authorized to receive them, the delivery or reception being made against receipt:

* * * * *

Further this decree granted concessions to ships issued packet privileges in the following terms, as translated:

* * * * *

CHAPTER XIX

Concession of packet boat privileges and of any other special favors or subventions and fiscalization of same.

ART. 157.—Passenger ships or only cargo vessels plying on regular shipping lines between ports of more than one State, will enjoy, as packet-boats, the following privileges, granted by the Ministry of Transport and Public Works:—

1st.—The faculty of sailing at any hour of the day or night, once the rulings of this regulations are complied with;

2nd.—The faculty of being allowed to discharge immediately, independent of Customs' permission and the presence of the respective guards;

3rd.—The exemption from Light-house taxes;

4th.—The exemption from contributing to houses of charity at all ports of the Republic;

5th.—Using a passport while awaiting change of the certificate of register, and if there is space for annotations;

6th.—Free passes or sailing dispatches for packets; only subject to maximum Federal stamps of 18000, [sic] and which will continue to be given by Customs, Police, Post-Office and Captain of the Port;

7th.—Concession of a 50% rebate on the docking charges, mooring to quay side, loading or discharging, to which foreign ships are subject to, duly respecting contracts in force on the date that this regulation is promulgated;

8th.—Dispenses from paying in ports, double expenses of loading, discharging and stevedoring of goods, on Sundays and Holidays, when by reason of a schedule approved by the Government, the vessels are obliged to call at or remain in ports on those days, contracts in force on the date of promulgation of this regulation being duly respected.

* * * * *

43. On June 3, 1941, at a time when the Executive in Brazil had taken over the legislative function of the Congress, decree law No. 3,326 was issued by President Vargas. The English translation of this decree law provides in part as follows:

> ARTICLE 1. Transportation of articles of correspondence and of postal despatches shall be made:
>
> * * * * * *
>
> II. On fluvial, maritime and lacustrine routes:
>
> (a) In Brazilian vessels of any description;
>
> (b) In steamships or packets belonging to foreign carriers, whether subsidized or not, sailing regularly between ports of Brazil and those of foreign countries.
>
> * * * * * *
>
> ARTICLE 2. It shall be obligatory for *all* fluvial, lacustrine and maritime carriers or companies of navigation and for Federal, State or Municipal railroads, to transport postal despatches and articles of correspondence gratuitously, without limitation on weight or volume.
>
> SECTION 1. The transportation shall also be obligatory and gratuitous on railroads, navigation or public highway companies or carriers enjoying especial treatment, benefits or favors from the Union, the States and Municipalities.
>
> SECTION 2. In case of vessels the net tonnage of which is equal to, or less than ten tons, the weight of despatches to be transported shall not exceed 4% of such capacity.

44. While the decree law quoted in the preceding finding includes foreign ships in its requirement to carry mail gratuitously, it is to be noted that the terms of the decree do not include the words "packet privileges".

45. On April 14, 1943, at a time when the powers of the Congress were being exercised by the Executive, President Vargas issued decree law No. 5496, which modified light dues (sometimes called lighthouse dues), and the granting of packet privileges. A translation of this decree reads in part as follows:

> The President of the Republic, exercising the powers vested in him under Article 180 of the Constitution, decrees:—

ART. 1. Foreign vessels calling at Brazilian ports, proceeding from foreign or Brazilian ports, with cargo or in ballast, carrying passengers or not, whether cleared for the port or putting in in distress, are obliged to pay light dues amounting to two thousand cruzeiros (Cr$ 2,000.00).

Sole Paragraph. This tax shall be payable as many times as such vessels enter any Brazilian port, not only on an outward but also on a return voyage.

ART. 2. Mail boats, universally recognized as such; i.e., those which carry passengers, mails and cargo, and steamers of regular lines, which enjoy the privileges of the former shall only pay the tax referred to, in the first two ports of call, both on the outward and return voyages. A certificate of this payment must be applied for, and will serve as proof in the other ports.

* * * * *

ART. 5. Steamers on regular lines, in order to enjoy packet privileges must be recognized as such by the Directorate General of the National Exchequer, on an application reported on by the Directorate of Customs Revenue and accompanied by:—

a) a certificate from the respective Custom House, testifying that the line is a regular one;

b) an authentic document giving the cargo capacity of the vessel, for which purpose the certificate of registry, passport, or Lloyd's register certificate may be presented.

Paragraph 1. The application having been reported on, it shall be submitted to the Director General, who, after examining the dossier, shall order the certificate (carta declaratoria) to be issued, on which stamps shall be paid at the Receiving Office of the Federal District or at the Custom Houses in the States, to twice the amount of No. 31 of the table accompanying Decree-Law No. 4,655 of 3rd September 1942.

Paragraph 2. The grant of packet privileges entails the fulfillment of the obligations laid down in Chapter XIX of Decree No. 10,524 of 23rd October 1913, Decree No. 16,300 of 31st December 1923, and Art. 54 of Law No. 4,984 of 31st December 1925.

* * * * *

46. In June 1951 an Executive decree of January 17, 1951 was issued. Among its preliminary provisions Article 3 therein states that the international postal and communications services will also be governed by international conventions and agreements approved in Brazil. Chapter VI

of this decree contains essentially a rewrite of the 1941 decree law quoted in finding 43.

47. The plaintiff's ships are United States flag ships. Under the law of Brazil, the Convention, terms of which are quoted in finding 6, obligates the United States to convey by ships of its registry or flag which it had used to transport its mail southward without charge to Brazil, mail that country sent on such ships to any destination.

48. The Annual Report of the United States Postmaster General for the Fiscal Year Ending June 30, 1955, provides in part as follows:

INTERNATIONAL TRANSPORTATION

> The Department will propose to the Postal Union of the Americas and Spain Congress in Bogota, Colombia, October 1955, that the free-transit provision of the Convention be made optional to the member countries.
>
> This provision now requires that each country furnish its postal transportation facilities and maritime shipping services free of charge to other member countries. *As a consequence, the United States is required to pay its own steamship companies for the service they perform for the other member countries.* And as the United States has by far the greater number of ships, this results in disproportionate use of our facilities and the expenditure of approximately $1,200,000 annually. The Department plans to terminate this arrangement in fiscal 1956.
>
> [Italics supplied.]

49. The parties agree that in the event the court determines that the plaintiff should recover for the carriage of mail outbound from the ports of Brazil, Uruguay and Argentina, judgment for this item of claim should be in the following amounts:

Mail from Argentina	$155,764.70
Mail from Brazil	89,928.38
Mail from Uruguay	34,300.71
	$279,993.79

The above amounts cover the carriage from December 1951 to February 29, 1956.

50. Prior to August 1, 1954, the Post Office Department required steamship companies to transport all incoming mails

from the ship to the post office. The plaintiff, during the times material herein, December 1951 through August 1, 1954, did so transport mail from ship to post office. The cost to the plaintiff for this trucking service was $8,858.61.

51. Section 405.(a) of the Merchant Marine Act of 1936 (74 Stat. 1985, 1995) provides as follows:

* * * * *

> All mails of the United States carried on vessels between ports between which it is lawful under the navigation laws for a vessel not documented under the laws of the United States to carry merchandise shall, insofar as practicable, be carried on vessels of United States registry.

* * * * *

52. The Annual Report of the United States Postmaster General for the Fiscal Year Ending June 30, 1923, provides in part as follows:

> FOREIGN MAIL SERVICE
>
> The Foreign Mail Service covers all the relations between the United States and foreign countries in the exchange of mails between them.
>
> Every opportunity for the safe and expeditious dispatch of mails to foreign countries is employed. In the assigning of mails for dispatch abroad vessels of American registry are employed in preference to vessels of foreign registry. This preference is limited to 24 hours for American vessels over a competing foreign vessel in the anticipated time of arrival in the port of destination. When the American vessel has sea-post service the preference is extended to 48 hours, because the distribution of mails on board tends to equalize the difference in time of arrival.

53. The Post Office Department accorded a preference to United States flag vessels as expressed in the Postmaster General's report from at least 1923. The 24-hour preference was extended to 48 hours at some point between 1923 and 1953.

54. Beginning about February 1953, and ending at the end of February 1956 without notice to the plaintiff, the Post Office Department withdrew this preference to United States flag vessels over vessels flying the flags of countries signatory to the Convention of the Postal Union of the Americas and

Spain, and sent a substantial quantity of mail by foreign ships which the plaintiff's ships were ready, able and willing to carry. This denial of preference was carried out by the Post Office Department for the purpose of taking advantage of the "free transit" provisions of the PUAS Convention.

55. Instructions given by the Assistant Postmaster General to the Acting New York Postmaster relating to the matter of preference read as follows:

January 29, 1953

Reference is made to previous instructions regarding "preferences" of 48 hours for letter mails and daily newspapers and 7 days for unimportant prints and parcel post to be allowed United States registry vessels in the dispatch of mails to other countries.

In reviewing this matter it has been decided that in the case of vessels flying the flags of countries signatory to the Convention of the Postal Union of the Americas and Spain (these are the vessels for which the weights of the mails, letters and prints, are at present being shown on Form 2963 d), the preference in the dispatch of "letters" and "prints" will not apply. That is, the "letters" and "prints" are to be dispatched by the vessel scheduled to deliver the mails first at destination regardless of registry. This action is to be taken so that we may be in a position to take fuller advantage of the free transit provisions of Article 3 of the Convention mentioned above.

No change is to be made in the preference covering parcel post.

The only exception to the above relates to vessels of Panama registry which are not proceeding to Panama. In such cases the 48-hour preference for vessels of United States registry will still apply.

Please also note that no change is to be made insofar as concerns the preferences covering vessels of other countries which are not signatory to the Convention of the Postal Union of the Americas and Spain; for instance, Sweden, Great Britain, France, etc.

March 27, 1953

Reference is made to your further letter (Form 407-A 15) dated March 4, 1953 relative to "preferences" in connection with the dispatch of surface mails on vessels flying the flag of countries signatory to the Convention of the Postal Union of the Americas and Spain.

In reviewing our original instructions of January 29, 1953 it appears that some clarification and supplementation is required.

In the case of dispatches via U.S. flag vessels as against vessels of other signatory countries it is intended that the vessel be used which will make the earliest delivery at port of discharge. For instance, if an Argentine flag vessel were sailing on April 1 and a U.S. flag vessel were sailing on April 2 to the same destination and the Argentine vessel is scheduled to arrive at Buenos Aires on April 17 and the U.S. flag vessel is to arrive there on April 18, then all letters and prints available for dispatch on April 1 are to go forward on the Argentine vessel. Formerly they would be held for the U.S. vessel because of the 18 hour preference.

In the case of vessels of signatory countries versus non-signatory countries, preference of 18 hours for letters and daily newspapers and 7 days for unimportant prints is to be given the signatory vessel. In other words, signatory vessels will have the same preference as U.S. flag vessels over vessels of non-signatory countries insofar as letters and prints are concerned.

These changes in preferences do not apply to parcel post; the present 7 days preference to U.S. flag vessels to continue.

With regard to the use of Canadian registry vessels this is to confirm that such vessels are to be treated the same as vessels of non-signatory countries inasmuch as the free transit provisions are not applicable between our two Administrations.

December 22, 1954

In connection with the dispatch of foreign closed transit regular mails (Letters and Prints) originating in the countries of the Postal Union of the Americas and Spain (Mexico, Cuba, etc.), advantage is to be taken of sailings of vessels of Postal Union of the Americas and Spain countries (Argentina, Brazil, etc.) when delivery can be made at destinations at approximately the same time as delivery would be made by vessels of United States registry. In this connection reference is had to my letter on the subject of preferences dated March 27, 1953.

When vessels of Postal Union of the Americas and Spain registry (other than the United States) are not available for the dispatch of foreign closed transit regular mails (Letters and Prints) originating in the countries of the P.U.A.S., but where there are United States registry vessels and vessels of non-P.U.A.S. signatory countries in competition with each other, such closed

transit mails should be dispatched on the vessels of non-P.U.A.S. signatory countries, such as Norwegian registry, instead of vessels of United States registry if delivery can be made at ports of discharge earlier or about the same time as delivery would be made if dispatched by United States registry vessels. In such cases the preferences given United States registry vessels will not be applicable.

This procedure is to be followed as the United States is reimbursed by the P.U.A.S. countries of origin for such regular mails dispatched on non-P.U.A.S. registry vessels.

56. On February 21, 1956, the Director, International Service, United States Post Office, Bureau of Transportation, wrote to the Postmasters at New York and New Orleans, in part, as follows:

> Effective March 1, 1956, the "free transit" provisions of the Convention of the Postal Union of the Americas and Spain will no longer be operative insofar as the United States is concerned. Hence certain changes are necessary in the submission of the above-named reports on and after that date.
>
> * * * * * *
>
> Unless you are advised to the contrary prior to March 1, 1956, on and after that date ships of United States registry serving ports in countries that are members of the Postal Union of the Americas and Spain will be accorded the same preference as other United States-flag ships; i.e., 2 days for letters and preferential prints and 7 days for non-preferential prints and parcel post. (This supersedes our letters of March 30, 1953 and December 22, 1954).

57. Prior to the denial of statutory preferences, normally all United States mails and foreign transit closed mails sent from the port of New York to ports served by the plaintiff had been transported by the plaintiff.

From early 1953 until March 1956, the Post Office Department denied statutory preference to the vessels of the plaintiff over those of its only competitors to the ports it served. Had the Post Office Department continued to accord preference to the vessels of the plaintiff, they would have normally carried all of the mail from the port of New York to the ports served by plaintiff during the period.

The amounts of mail withheld from the plaintiff during the period were solely within the knowledge of the Post Office Department. The mail which the plaintiff would have received had its vessels transported the mails, as shown by individual Post Office Department forms as having been carried by Postal Union of the Americas and Spain vessels, was 5,100,087 pounds, which would have produced $301,858.60 revenue.

The Post Office Department has made no payment to anyone for the mails transported by Postal Union of the Americas and Spain vessels, which were denied to the vessels of the plaintiff.

The plaintiff had provided all facilities and incurred all expenses necessary to the handling and transportation of the mail denied to it. Through the failure of the Post Office Department to deliver to the plaintiff all of the mail, the plaintiff was damaged by a loss of net revenue to at least the extent of $301,858.60, less trucking in the amount of $17,884.49, if that be a proper charge to be borne by the plaintiff.

Respectfully submitted.

WILLIAM E. DAY,
Commissioner.

Office-Supreme Court, U.S.
FILED
NOV 14 1962
JOHN F. DAVIS, CLERK

No. 519

In the Supreme Court of the United States

OCTOBER TERM, 1962

MOORE-McCORMACK LINES, INC., PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

BRIEF FOR THE UNITED STATES IN OPPOSITION

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OPINION BELOW

The opinion (Pet. App. A, 1–11) and findings of fact (Pet. App. A, 11–36) of the Court of Claims have not yet been reported.

JURISDICTION

The judgment of the Court of Claims dismissing petitioner's claim was entered on April 4, 1962, and a motion for new trial was denied on July 18, 1962. The petition for a writ of certiorari was filed on October 15, 1962. The jurisdiction of this Court is invoked under 28 U.S.C. 1255(1).

QUESTIONS PRESENTED

1. Whether the Court of Claims correctly found that petitioner had failed to prove that there was an implied promise by the United States to compensate it for mail carriage from South American ports.

2. Whether petitioner was entitled to recover because the Post Office had used foreign flag vessels to carry mail to South America, despite the preference given by the Merchant Marine Act to American flag vessels.

STATUTE AND CONVENTIONS INVOLVED

Section 405(a) of the Merchant Marine Act of 1936, 49 Stat. 1995, 46 U.S.C. (1958 ed.) 1145(a), provided[1]:

> All mails of the United States carried on vessels between ports between which it is lawful under the navigation laws for a vessel not documented under the laws of the United States to carry merchandise shall, insofar as practicable, be carried on vessels of United States registry.

The Convention of the Postal Union of the Americas and Spain of December 22, 1936 (approved by the President, August 20, 1937), 50 Stat. 1657, provided in pertinent part:

ARTICLE 3

Free and gratuitous transit

> 1. The gratuity of territorial, fluvial and maritime transit is absolute in the territory of the Postal Union of the Americas and Spain; consequently, the countries which form it obli-

[1] This section was subsequently repealed. Act of September 2, 1960, § 12(c), 74 Stat. 708, 725.

gate themselves to transport across their territories and to convey by the ships of their registry or flag which they utilize for the transportation of their own correspondence, without any charge whatsoever to the contracting countries, all that which the latter may send to any destination.

2. In cases of reforwarding, the contracting countries are bound to reforward the correspondence by the ways and means which they utilize for their own dispatches.

The Convention of the Postal Union of the Americas and Spain of November 9, 1950 (approved by the President, June 22, 1951), T.I.A.S. 2286, 2 U.S. Treaties (Pt. 2, 1951) 1362, provided in pertinent part:

ARTICLE 3

Free and gratuitous transit

1. The gratuity of territorial, fluvial and maritime transit is absolute in the territory of the Postal Union of the Americas and Spain; consequently the countries which form it obligate themselves to transport across their territories and to convey by ships of their registry or flag, without any charge to the contracting countries, all the correspondence which the latter may send to any destination whatsoever. However, this gratuity of transit will not be applied to the subsequent maritime transmissions of correspondence destined for a third country which is not a member of the Postal Union of the Americas and Spain in cases where a reshipment or transfer may be necessary, or justified expenses of handling may arise.

2. Likewise, when services of foreign Administrations are required for the subsequent conveyance of the closed mails, collection can be made from the Administrations of origin of the same amounts which the intermediary Administrations may be compelled to pay therefor.

3. In cases of onward dispatch, the contracting countries bind themselves to forward the correspondence by the most rapid ways and means which they utilize for their own mails.

STATEMENT

Petitioner, a domestic steamship company whose vessels fly the flag of the United States, has participated in the carriage of mails between ports of the United States and those of Uruguay, Brazil, and Argentina (Pet. App. A, 11–12, 21). In a previous action, it had sued the United States seeking to recover payment in compensation for the carriage from 1939 to 1942 of outgoing, northbound mails from the South American ports. The suit was based upon international postal conventions to which the United States was a signatory and by which this country had agreed, *inter alia*, that carriage of the mails from the South American signatories to the United States was to be provided free of charge by the United States to those countries.[2]

[2] Under the Conventions of the Universal Postal Union the United States was obligated to transport the mails tendered to it by the signatories and could then bill the signatories for collection (Commissioner's Finding 12, Pet. App. B, 11). Under the Convention of the Postal Union of the Americas and Spain of December 22, 1936 (see *supra*, pp. 2–3), and the Postal

Petitioner abandoned its entire claim for the mails from Argentina and the part of its claim to mails from Uruguay carried before 1940 because petitioner had agreed with these countries to carry mails from their ports free of charge in return for certain packet privileges.[3] The United States conceded liability as to the Uruguay mail carried after 1940. As to the mail from Brazilian ports, the parties agreed that a Brazilian decree was controlling and the Court of Claims held that this decree required petitioner to carry Brazilian mails gratuitously. *Moore-McCormack Lines, Inc.* v. *United States*, 119 Ct. Cls. 473, certiorari denied, 342 U.S. 876 (Pet. App. A, 1–2, 21–22).

After the interruption of service because of World War II, petitioner resumed the carriage of northbound and southbound mails in 1946 (Pet. App. A, 11–12). In 1956, petitioner again sued the United States claiming:

(1) $279,993.79 as compensation for the carriage during the years 1951 to 1956 of northbound mails, a service rendered by petitioner free of charge to the South American countries allegedly by virtue of the

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Conventions of 1946 (61 Stat. 3505) and 1950 (*supra*, p. 3, the United States obligated itself to provide such mail transportation free of charge (Pet. App. A, 12–14).

[3] A packet is a vessel conveying dispatches, mails, passengers, and goods, having fixed sailing days (Brief of Plaintiff in the Court of Claims, p. 10). The privileges accorded included preferential anchorage and berthing, exemptions from certain taxes, and rebates on various fees. See, *e.g.*, *Moore-McCormack Lines, Inc.* v. *United States*, 119 Ct. Cls. 473, 484, certiorari denied, 342 U.S. 876; Pet. App. A, 9, 32.

United States' participation in international postal conventions;

(2) $8,858.61 for the transportation of incoming mail from dockside to the United States Post Office;

(3) $283,974.11 for loss of revenues resulting from the Post Office Department's failure to utilize petitioner's services, rather than those of flag vessels of other signatory nations, in carrying southbound mails. Petitioner argued that, by statute, the Department was obliged to prefer a United States company's services to those of foreign companies with respect to all outgoing mail from the United States (Pet. App. A, 2).

The Court of Claims found that the evidence offered by the United States showed that under the laws of Uruguay, Brazil, and Argentina, petitioner was required to carry the mails free of charge in return for packet privileges which, at least in respect to Uruguay and Argentina, it had sought and received (Pet. App. A, 7–10, 27–34). This required carriage included delivery to the pertinent U.S. Post Office (Pet. App. A, 10, 35). The court also relied on its recent ruling in *Grace Line, Inc.* v. *United States,* No. 218–58, decided November 1, 1961, in holding that Section 405(a) of the Merchant Marine Act of 1936, 49 Stat. 1995, 46 U.S.C. (1958 ed.) 1145(a), did not require the Post Office Department to give American steamship companies a 100 percent preference to foreign companies, but rather was an expression of Congressional policy (Pet. App. A, 10–11; see also Pet. App. A, 35–36). Thus, the Court of Claims concluded that petitioner had shown no basis for recovery against

the United States, and its petition was dismissed (Pet. App. A, 11, 36).

ARGUMENT

In holding that petitioner was not entitled to compensation for the carriage of mail from South American ports to the United States, the court below correctly applied settled principles of law to the facts it found. The rejection of petitioner's claim based upon Section 405(a) of the Merchant Marine Act was equally correct and does not conflict with holdings of any other court. Accordingly, no question is presented meriting review by this Court.

1. Petitioner claims (Pet. 12–16, 19–24, 25–29) that the United States impliedly promised in international postal conventions [4] to compensate it for its mail services to other signatory countries. Before rendering the services here involved, however, petitioner was on notice that free mail services required by the foreign countries in return for packet privileges would not be compensated by the United States. See, *e.g.*, *Moore-McCormack Lines, Inc.* v. *United States*, 119 Ct. Cls. 473, certiorari denied, 342 U.S. 876. The Court of Claims has repeatedly held that steamship companies cannot recover against the United States

[4] If the postal conventions were treaties, the Court of Claims would have lacked jurisdiction. 28 U.S.C. 1502; *Falcon Dam Constructors* v. *United States*, 136 Ct. Cls. 358, 364–365. However, such conventions have been held to be executive agreements, being in effect part of the postal laws and regulations of the United States. See *Four Packages of Cut Diamonds* v. *United States*, 256 Fed. 305, 306 (C.A. 2); *Standard Fruit and Steamship Co.* v. *United States*, 103 Ct. Cls. 659, 682; 33 Ops. Atty. Gen. 276, 278.

on a theory of implied contract if they have notice that the United States has denied liability. *United Fruit Company* v. *United States*, 103 Ct. Cls. 303, 312, 313; *United Fruit Company* v. *United States*, 112 Ct. Cls. 519, 531; *Standard Fruit and Steamship Co.* v. *United States*, 103 Ct. Cls. 659, 682–684. As this Court has held, in order to prove the existence of a contract implied in fact, it must be demonstrated that the petitioner performed its services with a reasonable expectation of payment. *Colgman* v. *United States*, 152 U.S. 96, 99; *Balt. & Ohio R.R.* v. *United States*, 261 U.S. 592, 598; *Chesapeake &c. Tel. Co.* v. *United States*, 281 U.S. 385, 388. Thus, the critical question below was whether petitioner's services to Uruguay, Brazil, and Argentina were required by those countries to be without charge.

The court below found as facts[5] that the laws of the South American countries here involved required petitioner to carry outgoing mails free of charge in return for packet privileges, and that petitioner sought and received these privileges (see Pet. App. A, 6–9).[6] Petitioner has not demonstrated that these

[5] The extent of foreign law is a question of fact. *Cuba R.R. Co.* v. *Crosby*, 222 U.S. 473, 479–480.

[6] The Court of Claims said (Pet. App. A, 9–10) that there was no proof that petitioner received packet privileges from Brazil during the period for which payment is sought for the carrying of mail. The court, however, held that the burden was on petitioner to prove that the United States had made an implied promise. Consequently, for purposes of this case, petitioner must be assumed to have received packet privileges from Brazil.

findings are not supported by the evidence.[7] As we have seen, petitioner was on notice that the United States would not pay for mail carriage which South American countries required to be performed free of charge. Consequently, no contract may be implied. Furthermore, these findings show, as the Court of Claims held, that petitioner has already been otherwise compensated for the carriage of mail by the three South American countries. Petitioner cannot claim that it is entitled to additional compensation in the absence of some clear agreement for such payment.

Petitioner contends that the postal conventions are inconsistent with the South American requirements for free carriage and that therefore these requirements are invalid. The fact remains, however, that the South American countries insisted on this requirement, petitioner asked for packet privileges subject to it, and petitioner was on notice that the United States

[7] Petitioner contends (Pet. 28–29) that the Court of Claims erred in relying on its earlier decision in *Moore-McCormack Lines, Inc.* v. *United States*, 119 Ct. Cl. 473, which held that the law of Brazil requires free carriage of mail in return for packet privileges. Petitioner argues that the decision was based on a mistake of fact concerning the meaning of Brazilian law and that, in any event, the law is no longer valid because it is inconsistent with the new Brazilian constitution. However, on a motion for a new trial in the original *Moore-McCormack* case the Court of Claims reviewed petitioner's contention that it had made a mistake in its decision and found, we believe correctly, that no mistake had been made. 119 Ct. Cls. 485–486. And the constitutionality of a Brazilian law is not reviewable in an American court. *Banco de Espana* v. *Federal Reserve Bank*, 114 F. 2d 438, 443–444 (C.A. 2); see *Union Shipping & Trading Co.* v. *United States*, 127 F. 2d 771, 774 (C.A. 2).

would not pay compensation to mail carriers who received packet privileges from countries where this requirement existed. Moreover, the validity of South American laws under international conventions cannot be determined by an American court. Cf. *Banco de Espana* v. *Federal Reserve Bank*, 114 F. 2d 438, 443–444 (C.A. 2). And certainly the United States cannot be held financially liable if the State Department does not insist upon all the conceivable rights to which the United States may be entitled under international conventions.

2. There is no greater merit to petitioner's claim (Pet. 16–19, 21–25) based upon an alleged violation of the statutory preference contained in Section 405(a) of the Merchant Marine Act. This contention fails for three reasons.

First, Section 405(a) gave preference to United States flag vessels only "insofar as practicable." As the court below correctly recognized in *Grace Line, Inc.* v. *United States*, decided November 1, 1961, this was a Congressional declaration of policy which did not constitute an absolute prohibition against the transportation of mail from the United States to South American ports by vessels of foreign registry. Since transportation by the South American vessels was free of charge to American taxpayers by virtue of the postal conventions, the Post Office reasonably decided to follow this procedure. Second, as the Court of Claims also pointed out in *Grace Line*, even assuming that the statute were more than a Congressional declaration of policy, it did not entitle one United States steamship company, as opposed to

others of American registry, a 100 percent preference for itself. Thus, petitioner has no basis for claiming it was entitled to all, or even any particular part, of the mail carried by foreign vessels. Third, petitioner had no standing to enforce an alleged contractual preference. In *Perkins* v. *Lukens Steel Co.*, 310 U.S. 113, this Court held that potential contractors with the government had no standing to challenge the wage rates which the government was requiring in government contracts, on the ground that the executive branch has full discretion over contracting. Similarly, here, petitioner had no standing to challenge the decision of the Post Office as to which shipping company it would contract with.

CONCLUSION

For the reasons stated, we respectfully submit that the petition for a writ of certiorari should be denied.

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NOVEMBER 1962.

U.S. GOVERNMENT PRINTING OFFICE: 1962